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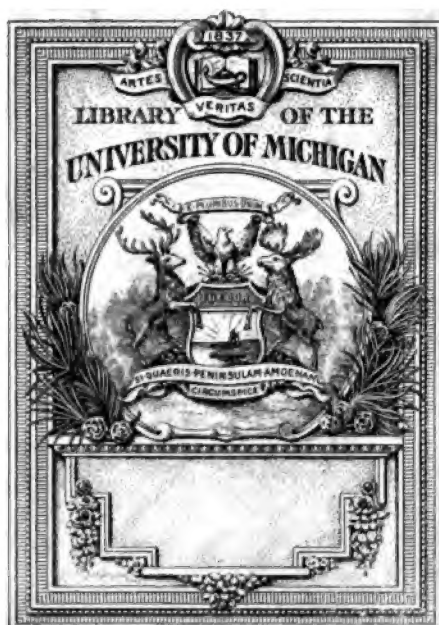
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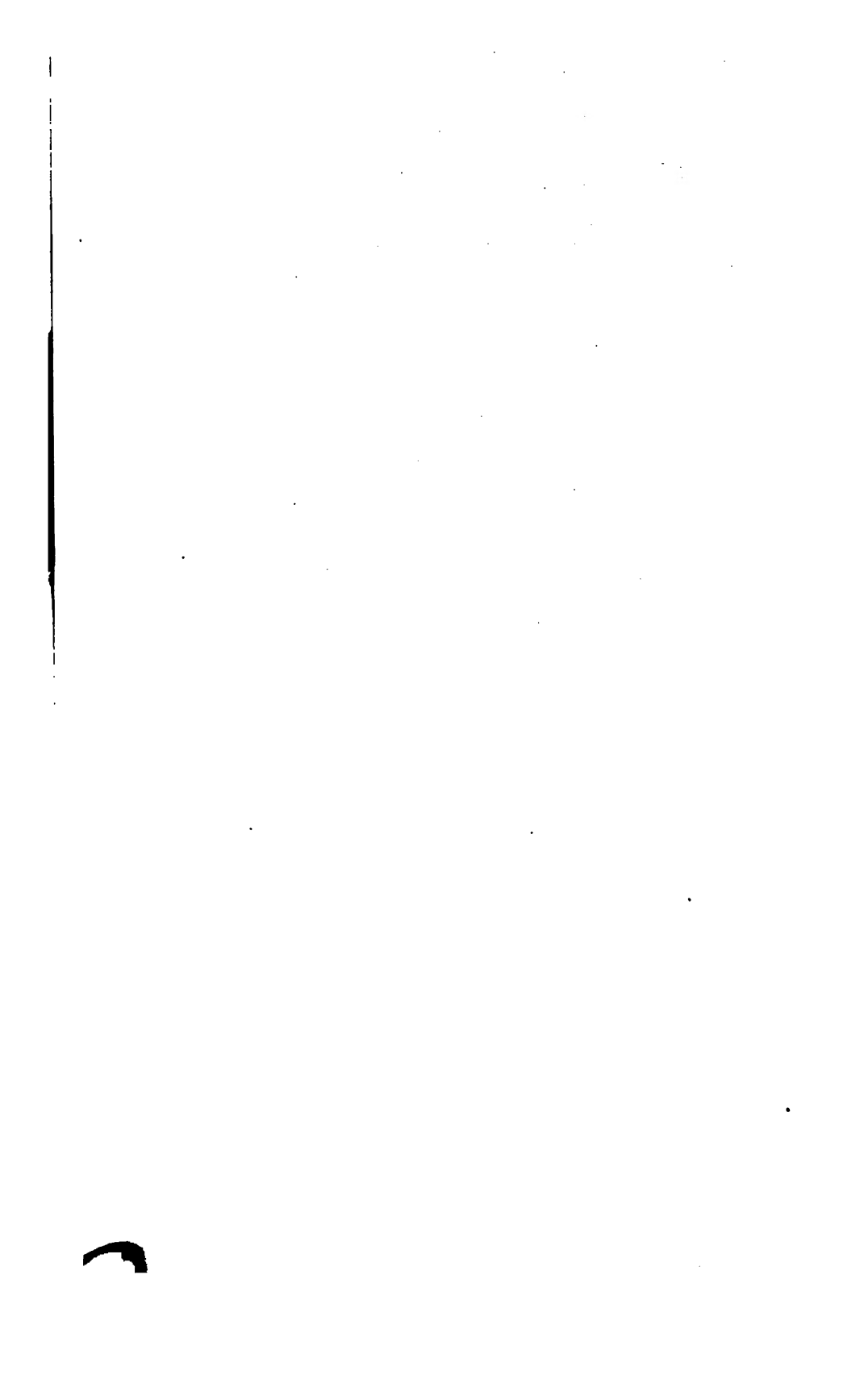
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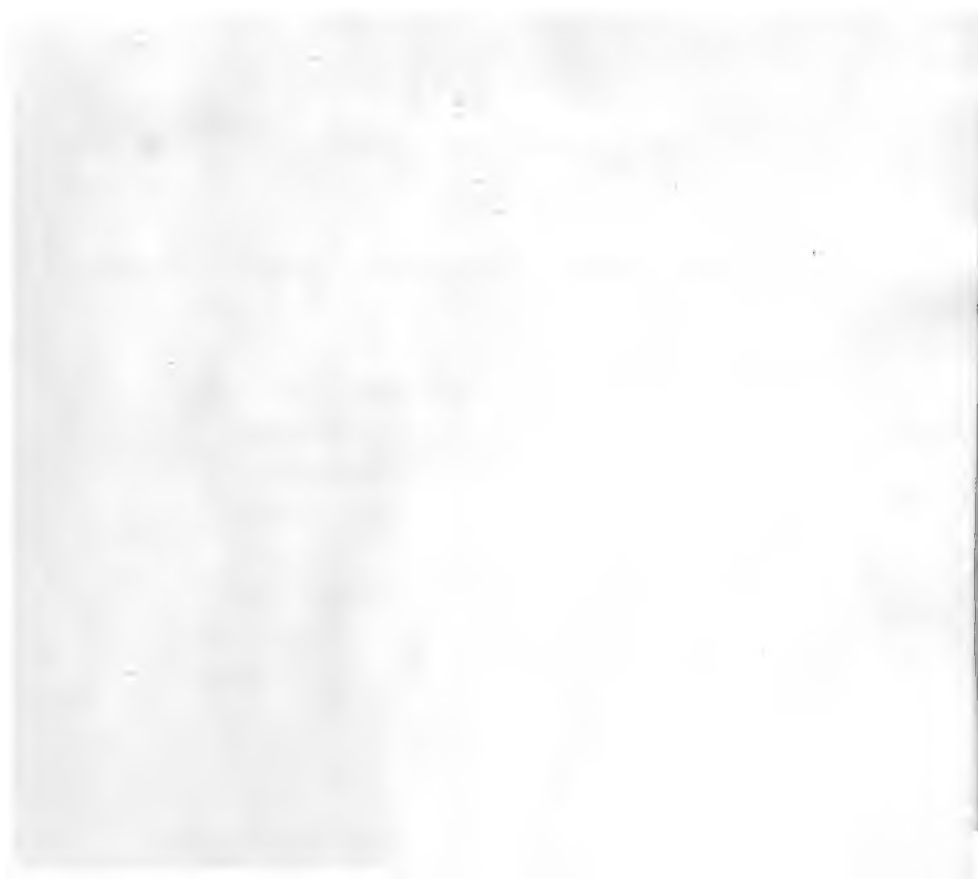
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REVISED RECORD  
OF THE  
CONSTITUTIONAL CONVENTION  
OF THE 12 13 4  
STATE OF NEW YORK

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May 8, 1894, to September 29, 1894

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REVISED AND INDEXED BY  
HON. WILLIAM H. STEELE,  
VICE-PRESIDENT OF THE CONSTITUTIONAL CONVENTION OF 1894.

*Pursuant to Chap. 21, Laws of 1898.*

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PUBLISHED UNDER DIRECTION OF  
HON. CHARLES E. FITCH, L. H. D.,  
SECRETARY OF THE CONSTITUTIONAL CONVENTION OF 1894.

*Pursuant to Chap. 419, Laws of 1900.*

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Vol. V.

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THE ARGUS COMPANY, PRINTERS.  
1900.





REVISED RECORD  
OF THE  
CONSTITUTIONAL CONVENTION  
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STATE OF NEW YORK.

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MAY 8, 1894, TO SEPTEMBER 29, 1894.

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DOCUMENT NO. 1.

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NAMES AND POST-OFFICE ADDRESSES OF DELEGATES  
TO CONSTITUTIONAL CONVENTION.

DELEGATES-AT-LARGE.

Name.	Post-Office Address.
Joseph H. Choate .....	50 West 47th street, New York city.
Elihu Root.....	25 East 69th street, New York city.
Edward Lauterbach.....	2 East 78th street, New York city.
Jesse Johnson.....	308 Clinton avenue, Brooklyn.
Frederick W. Holls.....	583 North Broadway, Yonkers.
Michael H. Hirschberg...	Grand avenue, Newburgh.
J. Rider Cady.....	25 Union street, Hudson.
John T. McDonough ....	21 Lake avenue, Albany.
John M. Francis.....	191 Second street, Troy.
John F. Parkhurst.....	Bath, Steuben county.
Commodore P. Vedder...	Ellicottville, Cattaraugus county.
John I. Gilbert.....	Malone, Franklin county.
Augustus Frank.....	Warsaw, Wyoming county.
William P. Goodelle .....	900 James street, Syracuse.
Daniel H. McMillan.....	233 Pennsylvania street, Buffalo.

## DISTRICT DELEGATES.

*First Senate District.*

Name.	Post-Office Address.
Lucius N. Manley .....	10 Pierson street, Long Island City.
Frederick Storm.....	Bayside, Queens county.
Charles L. Phipps .....	East Rockaway, Queens county.
Nicoll Floyd .....	Centre Moriches, Suffolk county.
Nathaniel S. Ackerly.....	Northport, Suffolk county.

*Second Senate District.*

Mirabeau Lamar Towns..	150 Quincy street, Brooklyn.
William H. Cochran.....	127 7th avenue, Brooklyn.
John G. Schumaker.....	245 Joralemon street, Brooklyn.
John B. Meyenborg .....	476 9th street, Brooklyn.
Almet F. Jenks.....	92 St. James place, Brooklyn.

*Third Senate District.*

Stephen B. Jacobs.....	160 South 3d street, Brooklyn.
Henry A. Powell.....	570 Bedford avenue, Brooklyn.
William H. Allaben.....	905 DeKalb avenue, Brooklyn.
Solomon Galinger .....	420 Monroe street, Brooklyn.
Charles B. Morton.....	829 Monroe street, Brooklyn.

*Fourth Senate District.*

Joseph C. Hecker.....	105 Roebling street, Brooklyn.
Frank H. Vogt.....	969 Broadway, Brooklyn.
William A. Faber.....	187 Varet street, Brooklyn.
Andrew Frank .....	547 Broadway, Brooklyn.
Robert M. Johnston .....	271 Leonard street, Brooklyn.

*Fifth Senate District.*

William D. Veeder .....	139 Pacific street, Brooklyn.
William Sullivan.....	Pierrepont House, Brooklyn.
Thomas J. Farrell.....	162 Hight street, Brooklyn.
William B. Davenport ...	174 Washington Park, Brooklyn.
John Cooney.....	189 Dean street, Brooklyn.

*Sixth Senate District.*

James W. Riggs.....	257 South 3d street, Brooklyn.
Eugene A. Curran.....	Flatbush, L. I., Kings county.
George W. Roderick.....	Gravesend, L. I., Kings county.
William M. Mullen.....	Stapleton, S. I., Richmond county.
Thomas W. Fitzgerald...	Port Richmond, S. I., Richmond Co.

*Seventh Senate District.*

Name.	Post-Office Address.
William C. Whitney . . . . .	2 West 57th street, New York city.
Wright Holcomb . . . . .	46 East 11th street, New York city.
De Lancey Nicoll . . . . .	123 East 38th street, New York city.
John M. Bowers . . . . .	30 West 18th street, New York city.
Arthur D. Williams . . . . .	310 West 23d street, New York city.

*Eighth Senate District.*

John Bigelow . . . . .	21 Gramercy Park, New York city.
Frank T. Fitzgerald . . . . .	52 Beach street, New York city.
Leonard A. Giegerich . . . . .	323 East 4th street, New York city.
Elliot Sandford . . . . .	106 East 25th street, New York city.
Morris Tekulsky . . . . .	39 Oak street, New York city

*Ninth Senate District.*

Joseph M. Ohmeis . . . . .	114 Seventh street, New York city.
Joseph Koch . . . . .	Sherwood House, New York city.
Charles Goeller . . . . .	212 East 114th street, New York city.
Aaron Herzberg . . . . .	331 Broome street, New York city.
Henry D. Hotchkiss . . . . .	Plaza Hotel, New York city.

*Tenth Senate District.*

Gideon J. Tucker . . . . .	203 East 14th street, New York city.
Delos McCurdy . . . . .	Park Avenue Hotel, New York city.
Charles H. Truax . . . . .	1992 Madison avenue, New York city.
William Q. Titus . . . . .	235 East 30th street, New York city.
James W. McLaughlin . . . . .	350 West 33d street, New York city.

*Eleventh Senate District.*

Robert E. Deyo . . . . .	106 West 48th street, New York city.
M. Warley Platzek . . . . .	530 Fifth avenue, New York city.
Francis Forbes . . . . .	8 West 56th street, New York city.
Nelson J. Waterbury . . . . .	13 West 56th street, New York city.
William P. Burr . . . . .	362 West 46th street, New York city.

*Twelfth Senate District.*

Nelson Smith . . . . .	151 West 48th street, New York city.
William McM. Speer . . . . .	224 West 59th street, New York city.
Jacob Marks . . . . .	213 East 71st street, New York city.
John D. Crimmins . . . . .	40 East 68th street, New York city.
David McClure . . . . .	52 East 68th street, New York city.

*Thirteenth Senate District.*

Name.	Post-Office Address.
Andrew H. Green .....	91 Park avenue, New York city.
James P. Campbell .....	52 West 84th street, New York city.
Joseph I. Green .....	1187 Lexington avenue, New York city.
Eugene Durnin .....	416 West 147 street, New York city.
Thomas Gilleran .....	214 East 87th street, New York city.

*Fourteenth Senate District.*

Charles W. Dayton .....	13 Mt. Morris Park, West, N. Y. city.
Michael J. Mulqueen .....	38 West 115th street, New York city.
John A. Deady .....	108 West 122d street, New York city.
Stephen S. Blake .....	1466 Lexington avenue, New York city.
Chauncey S. Truax .....	2034 Fifth avenue, New York city.

*Fifteenth Senate District.*

Andrew C. Fields .....	Dobbs Ferry, Westchester county.
William Church Osborn ..	Garrisons, Putnam county.
William T. Emmet .....	New Rochelle, Westchester county.
Adolph C. Hottenroth ...	169 Alexander avenue, New York city
John Gibney .....	Sing Sing, Westchester county.

*Sixteenth Senate District.*

William D. Dickey .....	3 Bay View avenue, Newburgh.
Henry W. Wiggins .....	12 Orchard street, Middletown.
Willard H. Mase .....	Matteawan, Dutchess county.
Charles W. H. Arnold ...	Staatsburgh, Dutchess county.
Ira M. Hedges .....	Haverstraw, Rockland county.

*Seventeenth Senate District.*

John A. Griswold .....	Catskill, Greene county.
George L. Danforth .....	Middleburgh, Schoharie county.
Jacob M. Maybee .....	Livingston Manor, Sullivan county.
Howard Chipp, Jr. ....	183 Fair street, Kingston.
George H. Bush .....	Ellenville, Ulster county.

*Eighteenth Senate District.*

Roswell A. Parmenter ....	113 Second street, Troy.
John H. Peck .....	3 Irving place, Troy.
William J. Roche .....	232 Third street, Troy.
Amos H. Peabody .....	New Lebanon, Columbia county.
Edwin C. Rowley .....	Union street, Hudson.

*Nineteenth Senate District.*

Name.	Post-Office Address.
A. Bleecker Banks.....	327 State street, Albany.
Edwin Countryman.....	202 State street, Albany.
Peter Rogers.....	West Troy, Albany county.
William Kimmey.....	Bethlehem Centre, Albany county.
Dennis P. Kerwin.....	43 Myrtle avenue, Albany.

*Twentieth Senate District.*

Abram B. Steele.....	Herkimer, Herkimer county.
Edward A. Brown.....	Dolgeville, Herkimer county.
Walter L. Van Denberg..	Northampton Road, Amsterdam.
Charles C. Lester.....	Saratoga Springs, Saratoga county.
Edward C. Whitmyer....	119 Front street, Schenectady.

*Twenty-first Senate District.*

Chester B. McLaughlin...	Port Henry, Essex county.
Charles H. Moore.....	Plattsburg, Clinton county.
Edgar A. Spencer.....	26 First avenue, Gloversville.
Frederick Fraser.....	Salem, Washington county.
Thomas W. McArthur....	Glens Falls, Warren county.

*Twenty-second Senate District.*

Vasco P. Abbott.....	Gouverneur, St. Lawrence county.
John G. McIntyre.....	Potsdam, St. Lawrence county.
William H. Baker.....	Constantia, Oswego county.
William H. Steele.....	162 East Second street, Oswego.
Elon R. Brown.....	42 Massey street, Watertown.

*Twenty-third Senate District.*

Henry J. Cookinham.....	5 Clark place, Utica.
John C. Davies.....	Camden, Oneida county.
Charles S. Mereness.....	Lowville, Lewis county.
James W. Barnum.....	Cherry Valley, Otsego county.
Abraham L. Kellogg.....	Oneonta, Otsego county.

*Twenty-fourth Senate District.*

D. Gerry Wellington.....	Hamilton, Madison county.
Ceylon H. Lewis.....	105 Furman street, Syracuse.
Louis Marshall.....	222 Cedar street, Syracuse.
George Barrow.....	Skaneateles, Onondaga county.
Thomas G. Alvord.....	514 Turtle street, Syracuse.



*Twenty-fifth Senate District.*

Name.	Post-Office Address.
Charles A. Fuller.....	Sherburne, Chenango county.
William J. Mantanye.....	Cortland, Cortland county.
Abram C. Crosby.....	Delhi, Delaware county.
H. Austin Clark.....	Owego, Tioga county.
George F. Lyon.....	235 Washington street, Binghamton.

*Twenty-sixth Senate District.*

John W. O'Brien.....	Auburn.
Henry R. Durfee.....	Palmyra.
Frank H. Hamlin.....	Canandaigua, Ontario county.
Frank E. Tibbetts.....	Ithaca, Tompkins county.
George R. Cornwell.....	Penn Yan, Yates county.

*Twenty-seventh Senate District.*

William H. Nichols.....	Bath, Steuben county.
Milo M. Acker.....	15 Riverside place, Hornellsville.
Charles R. Pratt.....	413 Lake street, Elmira.
Owen Cassidy.....	Havana, Schuyler county.
Charles A. Hawley.....	Seneca Falls, Seneca county.

*Twenty-eighth Senate District.*

Nathaniel Foote.....	22 Meigs street, Rochester.
Merton E. Lewis.....	837 East Main street, Rochester.
John A. Barhite.....	27 Madison street, Rochester.
George W. Clark.....	Penfield, Monroe county.
James H. Redman.....	Hamlin, Monroe county.

*Twenty-ninth Senate District.*

Nathan A. Woodward.....	Batavia, Genesee county.
Lockwood R. Doty.....	Geneseo, Livingston county.
Myron L. Parker.....	Lyndonville, Orleans county.
William Pool.....	Niagara street, Niagara Falls.
I. Sam Johnson.....	Warsaw, Wyoming county.

*Thirtieth Senate District.*

Charles Beckwith.....	186 West Chippewa street, Buffalo.
Herman F. Trapper.....	21 Cypress street, Buffalo.
William Turner.....	420 Front avenue, Buffalo.
James S. Porter.....	289 Cedar street, Buffalo.
Philip W. Springweiler....	145 Monroe street, Buffalo.

*Thirty-first Senate District.*

Name.	Post-Office Address.
Henry W. Hill.....	39 School street, Buffalo.
Tracy C. Becker.....	160 Highland avenue, Buffalo.
John Coleman.....	32 Newell avenue, Buffalo.
George A. Davis.....	Lancaster, Erie county.
Jonathan W. Carter.....	Eden Centre, Erie county.

*Thirty-second Senate District.*

Benjamin S. Dean.....	105 West Second street, Jamestown.
Louis McKinstry.....	Fredonia, Chautauqua county.
Charles Z. Lincoln.....	Little Valley, Cattaraugus county.
Oscar A. Fuller.....	Wellsville, Allegany county.
Frank B. Church.....	Wellsville, Allegany county.

## DOCUMENT NO. 2.

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### PARTIAL REPORT OF THE COMMITTEE ON RULES.

1. A committee on the preamble and bill of rights, to consist of eleven members.
2. On the Legislature — its organization and the number, apportionment, election, tenure of office and compensation of its members, to consist of seventeen members.
3. On the powers and duties of the Legislature, except as to matters otherwise referred, to consist of eleven members.
4. On the right of suffrage and the qualifications to hold office, to consist of seventeen members.
5. On the Governor and other State officers, their election or appointment, tenure of office, compensation, powers and duties, except as otherwise referred, to consist of seventeen members.
6. On the judiciary, to consist of seventeen members.
7. On the State finances, revenues, expenditures and taxation, and restrictions on the powers of the Legislature in respect thereto, and to public indebtedness, to consist of seventeen members.
8. On cities, their organization, government and powers, to consist of seventeen members.
9. On canals, to consist of eleven members.
10. On railroads, transportation and electrical transmission, to consist of seventeen members.
11. On counties, towns and villages, their organization, government and powers, to consist of seventeen members.
12. On county, town and village officers, other than judicial, their election or appointment, tenure of office, compensation, powers and duties, to consist of seventeen members.
13. On State prisons and penitentiaries, and the prevention and punishment of crime, to consist of eleven members.
14. On corporations and institutions not otherwise herein specified, to consist of seventeen members.
15. On currency, banking and insurance, to consist of eleven members.

16. On the militia and military officers, to consist of seven members.
17. On education and the funds relating thereto, to consist of seventeen members.
18. On charities and charitable institutions, to consist of seventeen members.
19. On industrial interests, except those already referred, to consist of seventeen members.
20. On the salt springs of the State, to consist of seven members.
21. On the relations of the State to the Indians residing therein, to consist of seven members.
22. On the future amendments and revisions of the Constitution, to consist of seven members.
23. Revision and engrossment, to consist of seven members.
24. Privileges and elections, to consist of eleven members.
25. Printing, to consist of seven members.
26. Contingent expenses, to consist of seven members.
27. Rules, to consist of seven members and the President.

## DOCUMENT NO. 3.

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The Committee on Rules unanimously recommend the adoption of the following rules and orders:

### CHAPTER I.

#### POWERS AND DUTIES OF THE PRESIDENT AND VICE-PRESIDENTS.

Rule 1. The President shall take the chair each day at the hour to which the Convention shall have adjourned. He shall call to order, and, except in the absence of a quorum, shall proceed to business in the manner prescribed by these rules.

Rule 2. He shall possess the powers and perform the duties herein prescribed, viz.:

1. He shall preserve order and decorum, and, in debate, shall prevent personal reflections, and confine members to the question under discussion. When two or more members rise at the same time, he shall name the one entitled to the floor.

2. He shall decide all questions of order, subject to appeal to the Convention. On every appeal he shall have the right, in his place, to assign his reason for his decision. In case of such appeal no member shall speak more than once.

3. He shall appoint all committees, except where the Convention shall otherwise order.

4. He may substitute any member to perform the duties of the chair during the absence or inability of both Vice-Presidents, but for no longer period than two consecutive legislative days, except by special consent of the Convention.

5. When the Convention shall be ready to go into committee of the whole, he shall name a chairman to preside therein, subject to right of committee to elect its own chairman.

6. He shall certify the passage of all amendments by the Convention, with the date thereof.

7. He shall designate the persons who shall act as reporters for the public press, not exceeding thirty in number; but no reporter shall be admitted to the floor who is not an authorized representative of a daily paper. Such reporters, so appointed, shall be entitled to such seats as the President shall designate, and shall have the right to pass to and fro from such seats in entering or leaving the Assembly Chamber. No reporter shall appear before any of the committees in advocacy of, or in opposition to, anything under con-

sideration before such committees. A violation of this rule will be sufficient cause for the removal of such reporter. Removal for this cause shall be vested in the President.

8. He shall not be required to vote in ordinary proceedings, except where his vote would be decisive. In case of a tie vote the question shall be lost. He shall have general control, except as provided by rule or law, of the Assembly Chamber and of the corridors and passages in that part of the Capitol assigned to the use of the Convention. In case of any disturbance or disorderly conduct in the galleries, corridors or passages, he shall have the power to order the same to be cleared, and may cause any person guilty of such disturbance or disorderly conduct to be brought before the bar of the Convention. In all such cases the members present may take such measures as they shall deem necessary to prevent a repetition of such misconduct, either by the infliction of censure or pecuniary penalty, as they may deem best, on the parties thus offending.

9. He shall also be *ex-officio* member and chairman of the Committee on Rules.

side, his duties shall devolve upon the First Vice-President, or, if he also be absent, upon the Second Vice-President.

10. In the absence of the President, or his inability to preside, his duties shall devolve upon the First Vice-President, or, if he also be absent, upon the Second Vice-President.

## CHAPTER II.

### ORDER OF BUSINESS.

Rule 3. The first business of each day's session shall be the reading of the Journal of the preceding day, and the correction of any errors that may be found to exist therein. Immediately thereafter, except on days and at times set apart for the consideration of special orders, the order of business shall be as follows:

1. Presentation of memorials. Under which head shall be included petitions, remonstrances and communications from individuals, and from public bodies.

2. Communications from the Governor and other State officers. Under this head shall be embraced also communications from public officers and from corporations in response to calls for information.

3. Notices, motions and resolutions, to be called for by districts, numerically.

4. Propositions for amendment, by districts in numerical order.

5. Reports of standing committees in the order stated in rule 15.



6. Reports of select committees.
7. Third reading of proposed amendments.
8. Unfinished business of general orders.
9. Special orders.
10. General orders.

Reports from Committee on Revision and Engrossment may be received under any order of business.

### CHAPTER III.

#### RIGHTS AND DUTIES OF MEMBERS.

Rule 4. Petitions, memorials, remonstrances and any other papers addressed to the Convention shall be presented by the President, or by any member in his place, read by their titles and referred to the proper committee.

Rule 5. Every member presenting a paper shall indorse the same; if a petition, memorial, remonstrance or communication in answer to a call for information, with a concise statement of its subject, and his name; if a notice or resolution, with his name; if a proposition for amendment, with a statement of its title and his name; if a proposition of any other kind for the consideration of the Convention, with a statement of its subject, the proposer's name, and the reference, if any, desired. A report of a committee must be indorsed with a statement of such report, together with the name of the committee making the same, and shall be signed by the chairman.

Rule 6. Every member who shall be within the bar of the Convention, when a question is stated from the chair, shall vote thereon unless he be excused by the Convention, or unless he be directly interested in the question; nor shall the roll of absentees be more than once called. The bar of the Convention shall be deemed to include the body of the Convention chamber.

Rule 7. Any member requesting to be excused from voting may make, when his name is called, a brief statement of the reasons for making such request, not exceeding three minutes in time, and the Convention, without debate, shall decide if it will grant such request; but nothing in this rule contained shall abridge the right of any member to record his vote on any question previous to the announcement of the result.

### CHAPTER IV.

#### ORDER AND DECORUM.

Rule 8. No member rising to debate, to give a notice, make a motion, or present a paper of any kind, shall proceed until he

shall have addressed the President, and been recognized by him as entitled to the floor. While the President is putting a question or a count is being had, no member shall speak or leave his place; and while a member is speaking no member shall entertain any private discourse or pass between him and the Chair.

Rule 9. When a motion to adjourn, or for a recess, shall be carried, no member or officer shall leave his place till the adjournment or recess shall be declared by the President.

Rule 10. No persons, except members of the Convention and the officers thereof, shall be permitted within the Secretary's desk, or the rooms set apart for the use of the Secretary, during the session of the Convention, and no member or other person shall visit or remain by the Secretary's table while the yeas and nays are being called, except officers of the Convention in the discharge of their duties.

## CHAPTER V.

### ORDER AND DEBATE.

Rule 11. No member shall speak more than once on the same question until every member desiring to speak on such question shall have spoken; nor more than twice on any question without leave of the Convention.

Rule 12. If any member, in speaking, transgress the rules of the Convention, the President shall, or any member may, call to order, in which case the member so called to order shall immediately sit down, and shall not rise unless to explain or proceed in order.

Rule 13. All questions relating to the priority of one question or subject-matter over another, under the same order of business, the postponement of any special order, or the suspension of any rule, shall be decided without debate.

Rule 14. All questions of order, as they shall occur, with the decisions thereon, shall be entered in the Journal, and at the close of the day's session a statement of all such questions and decisions shall be printed at the close of and as an appendix to the Journal.

## CHAPTER VI.

### COMMITTEES AND THEIR DUTIES.

Rule 15. The President shall appoint the following standing committees to report upon the subjects named, and such others as may be referred to them, viz.:

1. On the preamble and the bill of rights, to consist of eleven members.

2. On the Legislature, its organization and the number, apportionment, election, tenure of office and compensation of its members, to consist of seventeen members.

3. On the powers and duties of the Legislature, except as to matters otherwise referred, to consist of eleven members.

4. On the right of suffrage and the qualifications to hold office, to consist of seventeen members.

5. On the Governor and other State officers, their election or appointment, tenure of office, compensation, powers and duties, except as otherwise referred, to consist of seventeen members.

6. On the judiciary, to consist of seventeen members.

7. On the State finances, revenues, expenditures and taxation, and restrictions on the powers of the Legislature in respect thereto and to public indebtedness, to consist of seventeen members.

8. On cities, their organization, government and powers, to consist of seventeen members.

9. On canals, to consist of eleven members.

10. On railroads, transportation, and electrical transmission, to consist of seventeen members.

11. On counties, towns, and villages, their organization, government and powers, to consist of seventeen members.

12. On county, town and village officers, other than judicial, their election or appointment, tenure of office, compensation, powers and duties, to consist of seventeen members.

13. On State prisons and penitentiaries, and the prevention and punishment of crime, to consist of eleven members.

14. On corporations and institutions, not otherwise herein specified, to consist of seventeen members.

15. On currency, banking and insurance, to consist of eleven members.

16. On the militia and military officers, to consist of seven members.

17. On education and the funds relating thereto, to consist of seventeen members.

18. On charities and charitable institutions, to consist of seventeen members.

19. On industrial interests, except those already referred, to consist of seventeen members.

20. On the salt springs of the State, to consist of seven members.

21. On the relations of the State to the Indians residing therein, to consist of seven members.

22. On future amendments and revisions of the Constitution, to consist of seven members.

23. Revision and engrossment, to consist of seven members.
24. Privileges and elections, to consist of eleven members.
25. Printing, to consist of seven members.
26. Contingent expenses, to consist of seven members.
27. Rules, to consist of seven members, and the President.

Rule 16. The several committees shall consider and report without unnecessary delay, upon the respective matters referred to them by the Convention.

Rule 17. The Committee on Revision and Engrossment shall examine and correct the amendments which are referred to it, for the purpose of avoiding inaccuracies, repetitions, and inconsistencies. It shall also carefully examine in the order in which they shall be directed by the Convention to be engrossed for a third reading, all amendments so engrossed, and see that the same are correctly engrossed, and shall immediately report the same in like order to the Convention before they are read the third time.

Rule 18. It shall be the duty of the Committee on Printing to examine and report on all questions of printing referred to them; to examine from time to time, and ascertain whether the prices charged for printing, and the quantities and qualities furnished, are in conformity to the orders of the Convention and to the conditions fixed by it; to ascertain and report the number of copies to be printed, and how distributed; and to report to the Convention from time to time, any measures they may deem useful for the economical and proper management of the Convention printing.

Rule 19. It shall be the duty of the Committee on Contingent Expenses to inquire into the expenditures of the Convention, and whether the same are being or have been made in conformity to law and the orders of the Convention, and whether proper vouchers exist for the same, and whether the funds provided for the purpose are economically applied, and to report, from time to time, such regulations as may conduce to economy and secure the faithful disbursement of the moneys appropriated by law.

## CHAPTER VII.

### GENERAL ORDERS AND SPECIAL ORDERS.

Rule 20. The matters referred to the Committee of the Whole Convention shall constitute the general orders, and their titles shall be recorded in a calendar kept for that purpose by the Secretary, in the order in which they shall be severally referred.

Rule 21. The business of the general orders shall be taken up in the following manner, viz.: The Secretary shall announce the title of each proposed amendment or other matter, as it shall be reached in its order; whereupon it shall be taken up on the call of any member, without the putting of a question therefor, but if not so moved, it shall lose its precedence for the day. And whenever three proposed amendments or other matters have been thus moved the Convention shall go into Committee of the Whole upon them without further order.

Rule 22. Tuesday and Thursday of each week shall be set apart especially for the consideration of the general orders; but they may be considered on any other day when reached in their order.

Rule 23. Each member shall be furnished daily with a printed list of the general orders, which shall be kept on his files by the Sergeant-at-Arms, in the same manner as other printed documents.

Rule 24. Any matter may be made a special order for any particular day, by a report of the Committee on Rules or by unanimous consent.

## CHAPTER VIII.

### COMMITTEE OF THE WHOLE.

Rule 25. Any matter may be committed to the Committee of the Whole after the report or discharge of a standing or select committee, or by unanimous consent without such report or discharge. The same rules shall be observed in Committee of the Whole as in the Convention, so far as the same are applicable, except that the previous question shall not apply, nor the yeas and nays be taken.

Rule 26. A motion to "rise and report progress" shall be in order at any stage, and shall be decided without debate. A motion to rise and report is not in order until each section and the title have been considered, unless the limit of time has expired.

Rule 27. Proposed amendments and other matters shall be considered in Committee of the Whole in the following manner, viz.: They shall be first read through, if the committee so direct; otherwise they shall be read and considered by sections. When the limit of time has expired, the amendments which have been proposed and not previously acted upon shall be voted upon in their order without further debate. The proposed amendment as amended shall then be voted upon without debate, and the committee shall then rise and report in accordance with the action which it has taken.

If the committee shall have adopted any proposed amendment, the same shall be reported complete with any amendments made in committee incorporated in their proper places.

Rule 28. If at any time, when in Committee of the Whole, it be ascertained that there is no quorum, the chairman shall immediately report the fact to the President, who then takes the chair for the purpose of securing a quorum, and when that is obtained the chairman resumes his duties.

Rule 29. Should the committee not have completed the business before it rises, the chairman will report progress and ask leave to sit again. If leave be refused, the effect is to bring up the subject immediately before the Convention.

## CHAPTER IX.

### PROPOSED AMENDMENTS TO THE CONSTITUTION.

Rule 30. No proposition for amendment shall be introduced in the Convention except in one of the following modes, viz.:

1. Under the order of introduction of propositions for amendment by districts in numerical order.
2. By report of a committee.

Rule 31. The title of each proposition for amendment introduced shall state concisely its subject-matter.

Rule 32. All propositions for amendment, after their second reading, which shall be by title, shall be referred to a standing or select committee, to consider and report thereon, and shall be immediately printed and placed on the files of each member. All proposed amendments reported shall, if the report be received, be committed to the Committee of the Whole and immediately printed. When a committee has reported that no amendment should be made to the provisions of the existing Constitution relating to any specified subject and such report is agreed to, all propositions for amendment relating to that subject which have been referred to that committee shall be considered as rejected. No standing or select committee shall be discharged from the consideration of a proposed amendment referred to it until the committee has had a meeting, subsequent to such reference.

Rule 33. Proposed amendments reported by the Committee of the Whole shall be subject to debate before the question to agree with the committee in their report is put.

Rule 34. No proposed amendment shall be ordered to a third reading until it shall have been considered in Committee of the Whole.



Rule 35. No proposed amendment shall be put upon its third reading until it shall have been reported by the Committee on Revision and Engrossment as correctly revised and engrossed, unless by unanimous consent. Nor shall any proposed amendment be read the third time, unless it shall have been once printed.

Rule 36. Every proposed amendment shall receive three separate readings, previous to its final passage, and the third reading shall be on a day subsequent to that on which the proposed amendment passed in Committee of the Whole.

Rule 37. The third reading of proposed amendments shall take place in the order in which they have been ordered to a third reading, unless the Convention, by a vote of two-thirds of the members present, direct otherwise, or the proposed amendment to be read is laid on the table. And the question on the final passage of every proposed amendment shall be taken immediately after such third reading, and without debate.

Rule 38. In all cases where unanimous consent is asked for advancing a proposed amendment out of its order, it shall be the duty of the President to plainly announce such request in full twice.

Rule 39. On the third reading of a proposed amendment after the reading of the title and before the reading of the text, the proposed amendment shall be open one hour, if required, for debate on its merits, before the previous question shall be ordered; but no member shall speak more than five minutes or more than once; the vote, however, may be taken at any time when the debate is closed.

Rule 40. On the third reading of the proposed amendment no amendment thereto shall be in order, except to fill blanks, without unanimous consent.

Rule 41. A motion may be made during the third reading of any proposed amendment to recommit it with instructions, but the instructions shall be in writing, and such motion shall not be debatable.

Rule 42. A register shall be kept by the Secretary of all proposed amendments introduced in the Convention, in which shall be recorded, under appropriate heads, the progress of such proposed amendments from the date of their introduction to the time of their final disposition.

Rule 43. In all cases where a proposed amendment, order, motion or resolution shall be entered on the Journal, the name of the member introducing or moving the same shall also be entered on the journal.

# CHAPTER X.

## MOTIONS AND THEIR PRECEDENCE.

Rule 44. When a question is under consideration, the following motions only shall be received; which motions shall have precedence in the order stated, viz.:

Motions, to, or for:

- |                                           |   |                                       |
|-------------------------------------------|---|---------------------------------------|
| 1. Adjourn for the day.                   | } | Not amendable or debatable.           |
| 2. Recess.                                |   |                                       |
| 3. Call of the Convention.                |   |                                       |
| 4. Previous question.                     |   |                                       |
| 5. Lay on the table.                      |   |                                       |
| 6. Postpone indefinitely (not amendable). | } | Preclude debate on<br>main questions. |
| 7. Postpone to a certain day.             |   |                                       |
| 8. Go into Committee of the Whole.        |   |                                       |
| 9. Commit to Committee of the Whole.      |   |                                       |
| 10. Commit to a standing committee.       |   |                                       |
| 11. Commit to a select committee.         |   |                                       |
| 12. Amend.                                |   |                                       |

Rule 45. Every motion or resolution shall be stated by the President or read by the Secretary before debate, and again, if requested by any member, immediately before putting the question; and every motion, except those specified in subdivisions one to eleven, inclusive, of rule 44, shall be reduced to writing if the President or any member request it.

Rule 46. After a motion shall be stated by the President, it shall be deemed in the possession of the Convention, but may be withdrawn at any time before it shall be decided or amended.

Rule 47. The motion to adjourn, to take a recess, and to adjourn for a longer period than one day, shall always be in order; but the latter motion shall not preclude debate.

Rule 48. A motion to reconsider any vote must be made on the same day on which the vote proposed to be reconsidered was taken, or on the legislative day next succeeding, and by a member who voted in the majority, except to reconsider a vote on the final passage of a proposed amendment, which shall be privileged to any member. Such motion may be made under any order of business, but shall be considered only under the order of business in which the vote proposed to be reconsidered occurred. When a motion for reconsideration is decided, that decision shall not be reconsidered, and no question shall be twice reconsidered; nor shall any vote be reconsidered upon either of the following motions:

To adjourn.

To lay on the table.

To take from the table; or

For the previous question.

Rule 49. No amendment to a motion shall be received while another is pending, unless it be an amendment to the amendment and germane to the subject.

## CHAPTER XI.

### OF RESOLUTIONS.

Rule 50. The following classes of resolutions shall lie over one day for consideration, after which they may be called up, as of course, under their appropriate order of business.

1. Resolutions containing calls for information from any of the executive departments, from State, county or municipal officers, or from any corporate bodies.

2. Resolutions giving rise to debate, except such as shall relate to the disposition of business immediately before the Convention, to the business of the day on which they may be offered or to adjournments or recesses.

Rule 51. All resolutions for the printing of an extra number of documents shall be referred, as of course, to the standing committee on printing, for their report thereon before final action by the Convention.

Rule 52. All resolutions authorizing or contemplating expenditures for the purposes of the Convention shall be referred to the standing Committee on Contingent Expenses for their report thereon before final action by the Convention.

## CHAPTER XII.

### THE PREVIOUS QUESTION.

Rule 53. The "previous question" shall be put as follows: "Shall the main question now be put?" and, until it is decided, shall preclude all amendments or debate. When, on taking the previous question, the Convention shall decide that the main question shall not now be put, the main question shall be considered as still remaining under debate. The "main question" shall be on the passage of the proposed amendment to the Constitution, resolution or other matter under consideration, but when amendments thereto are pending, the question shall first be taken upon such amendments in their order, and when adopted in Committee of the Whole, and not acted on in the Convention, the question shall be taken upon such amendments in like order.

## CHAPTER XIII.

## THE CONVENTION CHAMBER AND PRIVILEGES OF ADMISSION TO THE FLOOR.

Rule 54. The following classes of persons, besides officers and members of the Convention, shall be entitled to admission to the floor of the Convention during the session thereof, viz.:

1. Governor, Lieutenant-Governor, and ex-Governors of the State.
2. Judges of the Court of Appeals and of the Supreme Court.
3. The members of the Senate and Assembly, and ex-Speakers.
4. The State officers, deputies and commissioners.
5. The Regents of the University.
6. United States Senators and Congressmen.
7. The Capitol Commissioners.
8. Persons in the exercise of an official duty directly connected with the business of the Convention.
9. The reporters for the press, as provided by subdivision 7 of rule 2.

No other person shall be admitted to the floor during the session, except upon the permission of the President or by vote of the Convention; and persons so admitted shall be allowed to occupy places only in the seats in the rear of the Assembly Chamber. All permits granted by the President may be revoked by him at pleasure, or upon the order of the Convention. No person shall be entitled to the privileges of the floor of the Convention as a legislative reporter of a newspaper who is interested in pending or contemplated constitutional revision, or who is employed by, or receives compensation from, any corporation, except a newspaper, news or press association. The doors of the Convention shall be kept open to the public during all its sessions.

## CHAPTER XIV.

## GENERAL RULES.

Rule 55. Equivalent motions, resolutions or amendments thereto shall not be entertained. If any question contains several distinct propositions, it shall be divided by the Chair at the request of any member, but a motion to "strike out and insert" shall be indivisible.

Rule 56. All proposed action touching the rules and order of business except by unanimous consent, shall be referred to the Committee on Rules; such committee may sit during the session of the Convention without special leave, and report at any time

on rules or order of business. It will be in order to call up for consideration at any time a report from the Committee on Rules. Any member may object to its consideration until the next legislative day, and if sustained by twenty-four other members, the consideration shall be so postponed, but only once. Pending the final consideration thereof, but one motion that the Convention adjourn may be entertained, and no other dilatory motion shall be entertained until such report is fully disposed of. A motion to suspend the rules shall in all cases state specifically the object of the suspension, and every case of suspension of a rule under such notice and motion shall be held to apply only to the object specified therein. Provided that whenever a standing committee shall make a report on a constitutional amendment or other subject, or at any time, the Committee on Rules may report a rule limiting the time of debate; and if approved or unquestioned by the Convention, such report shall stand as the time limited for debate on the subject-matter referred to in such rule, and the previous question or other motion to close debate shall not be in order until the expiration of the time allotted, or the debate has been closed; the time thus allotted for debate shall be equally divided between those in favor and those opposed to the subject-matter under consideration.

Rule 57. The yeas and nays may be taken on any question whenever so required by any fifteen members (unless a division by yeas and nays be already pending), and when so taken shall be entered on the Journal.

Rule 58. When the Convention shall be equally divided on any question, including the President's vote, the question shall be deemed to be lost.

Rule 59. In considering the report of the Committee on Revision and Engrossment, each article shall be open to amendment germane to such changes as may have been reported by the committee, without previous notice, but no one shall speak more than five minutes, or more than once, on any proposition to amend.

Rule 60. When a blank is to be filled and different sums or times shall be proposed, the question shall be first taken on the highest sum and the longest time.

Rule 61. A majority of the Convention shall constitute a quorum. In all cases of the absence of members during its sessions, the members present may take such measures as they shall deem necessary to secure the presence of absentees, and may inflict such censure or pecuniary penalty as they may deem just on those who,

on being called on for that purpose, shall not render sufficient excuse for their absence.

Rule 62. For the purpose of securing the attendance of members, a call of the Convention may be made, but such call shall not be in order after the main question has been ordered, nor after the voting on any question has commenced nor after the third reading of an amendment has been completed.

Rule 63. When less than a quorum vote on any subject under consideration by the Convention, it shall be in order, on motion, to close the bar of the Convention, whereupon the roll of members shall be called by the Secretary, and if it is ascertained that a quorum is present, either by answering to their names or by their presence in the Convention, the yeas and nays shall again be ordered by the President, and if any member present refuses to vote, such refusal shall be deemed a contempt, and unless purged, the Convention may order the Sergeant-at-Arms to remove said member or members without the bar of the Convention, and all privileges of membership shall be refused the person or persons so offending until the contempt be duly purged.

Rule 64. Whenever any person shall be brought before the bar of the Convention for adjudged breach of its privileges, no debate shall be in order, but the President shall proceed to execute the judgment of the Convention without delay or debate.

Rule 65. It shall be the duty of the Secretary to keep the Journal of each day's proceedings, which shall be printed and laid on the table of members on the morning after its approval. In addition to his other duties he shall prepare and supervise the printing of the calendars of the orders of the day and cause them to be placed on the files before the beginning of each day's session. All appointments of officers and employes shall be entered on the Journal of the Convention, with the date of appointment.

Rule 66. It shall be the duty of the stenographer of the Convention to be present at every session of the Convention. He shall take stenographic notes of the debates in the Convention and in Committee of the Whole, and shall at each day's session of the Convention furnish a copy of the debates of the day before written out in long-hand, and file the same with the Secretary, who shall keep the same in his office, and the same shall at all times be open to the inspection of delegates.

Rule 67. At a reasonable time, to be determined by the Convention, and at least five days before final adjournment, the Committee on Revision and Engrossment shall be instructed to accurately enroll and engross the present State Constitution, with

all amendments thereto properly inserted, or the proposed new Constitution; and the same shall be reported by said committee to the Convention, read through therein, and submitted to a final vote prior to its final adjournment. When an article of the Constitution is amended, or a new article substituted or added, such amended article, or new article, shall be enrolled and engrossed entire in its proper place in the Constitution.

## CHAPTER XV.

### MISCELLANEOUS PROVISIONS.

Rule 68. The Sergeant-at-Arms shall, under the direction of the Committee on Printing, receive from the printer all matter printed for the use of the Convention, and keep a record of the time of the reception of each document, and the number of copies received, and cause a copy of each to be placed on the desk of each member immediately after their reception by him. Subject to the direction of the President, he shall enforce the rules of the Convention.

Rule 69. Separate files of the daily journal, reports of committees and of all documents ordered to be printed shall be prepared and kept by the Sergeant-at-Arms, and one copy shall be placed upon the desk of each member of the Convention and of the Secretary.

Rule 70. There shall be printed, as of course, and without any special order, 1,000 copies of the Journal and of all reports of committees on the subject of constitutional revision.

Rule 71. Five hundred copies of the Journal and five hundred copies of the reports as printed shall be bound and distributed as follows, viz.: To each member of the Convention, two copies; State library, five copies; the library of the Senate, five copies; the library of the Assembly, five copies; the office of each county clerk, one copy; and the remaining copies to such libraries and other institutions as shall be designated by the President or by the Convention.

JOSEPH H. CHOATE,  
*Chairman.*

## DOCUMENT NO. 4.

(In Response to Resolution No. 40, Vol. 1, Page 134.)

### STANDING COMMITTEES.

#### On Preamble and Bill of Rights:

Mr. Francis, Chairman.	Mr. Bigelow.
Mr. Alvord.	Mr. A. H. Green.
Mr. Augustus Frank.	Mr. Tucker.
Mr. Van Denbergh.	Mr. Schumaker.
Mr. Woodward.	Mr. Veeder.
Mr. Parker.	

#### On the Legislature—its Organization and the Number, Apportionment, Election, Tenure of Office and Compensation of its Members:

Mr. Becker, Chairman.	Mr. Schumaker.
Mr. Lincoln.	Mr. Crimmins.
Mr. Acker.	Mr. Giegerich.
Mr. E. R. Brown.	Mr. Bush.
Mr. Dickey.	Mr. Peck.
Mr. Crosby.	Mr. Osborn.
Mr. Davies.	Mr. Sullivan.
Mr. Root.	
Mr. Morton.	

#### On the Powers and Duties of the Legislature:

Mr. Vedder, Chairman.	Mr. Roche.
Mr. Goodelle.	Mr. Rogers.
Mr. Wellington.	Mr. Maybee.
Mr. Barhite.	Mr. Kimmey.
Mr. Dean.	Mr. Mullen.
Mr. Johnston.	Mr. Kerwin.
Mr. Mantanye.	Mr. Hottenroth.
Mr. Moore.	
Mr. Parker.	
Mr. E. A. Brown.	

#### On the Right of Suffrage:

Mr. Goodelle, Chairman.	Mr. Bigelow.
Mr. Cookinham.	Mr. Tucker.
Mr. Parkhurst.	Mr. McClure.
Mr. Lauterbach.	Mr. Nicoll.
Mr. Hill.	Mr. Deady.
Mr. Abbott.	Mr. Towns.
Mr. Wellington.	Mr. Cochran.
Mr. O'Brien.	
Mr. Wiggins.	
Mr. Alvord.	



On the Governor and other State Officers, their election or Appointment, Tenure of Office, Compensation, Powers and Duties:

Mr. McMillan, Chairman.	Mr. McCurdy.
Mr. Abbott.	Mr. Jenks.
Mr. Pool.	Mr. Smith.
Mr. O. A. Fuller.	Mr. Tekulsky.
Mr. Hamlin.	Mr. Campbell.
Mr. Mereness.	Mr. Trapper.
Mr. Pratt.	Mr. Marks.
Mr. Manley.	
Mr. Vedder.	
Mr. Hedges.	

On the Judiciary:

Mr. Root, Chairman.	Mr. C. H. Truax.
Mr. Marshall.	Mr. Parmenter.
Mr. Cookinham.	Mr. Countryman.
Mr. Becker.	Mr. Bowers.
Mr. Cady.	Mr. Nicoll.
Mr. Parkhurst.	Mr. Jenks.
Mr. Gilbert.	Mr. Bush.
Mr. J. Johnson.	
Mr. McMillan.	
Mr. Foote.	

On the State Finances, Revenues, Expenditures and Taxation:

Mr. Acker, Chairman.	Mr. F. T. Fitzgerald.
Mr. Vedder.	Mr. Speer.
Mr. I. Sam Johnson.	Mr. Smith.
Mr. Cassidy.	Mr. Burr.
Mr. A. B. Steele.	Mr. Mulqueen.
Mr. Jacobs.	Mr. J. W. McLaughlin.
Mr. O. A. Fuller.	Mr. Blake.
Mr. Tibbetts.	
Mr. Pratt.	
Mr. Kellogg.	

On Cities, their Organization, Government and Powers:

Mr. J. Johnson, Chairman.	Mr. A. H. Green.
Mr. Francis.	Mr. Davenport.
Mr. Becker.	Mr. F. T. Fitzgerald.
Mr. H. A. Clark.	Mr. Hotchkiss.
Mr. C. H. Lewis.	Mr. Speer.
Mr. Holls.	Mr. Rowley.
Mr. M. E. Lewis.	Mr. Banks.
Mr. Spencer.	
Mr. Morton.	
Mr. Coleman.	

**On Canals:**

Mr. Cady, Chairman.	Mr. Danforth.
Mr. Porter.	Mr. Williams.
Mr. Floyd.	Mr. Blake.
Mr. Fraser.	Mr. Hottenroth.
Mr. Baker.	
Mr. Nichols.	
Mr. G. W. Clark.	

**On Railroads, Transportation and Electrical Transmission:**

Mr. Davies, Chairman.	Mr. McClure.
Mr. McIntyre.	Mr. Hotchkiss.
Mr. Cornwell.	Mr. Chipp.
Mr. Dean.	Mr. Koch.
Mr. Johnston.	Mr. Holcomb.
Mr. Baker.	Mr. Herzberg.
Mr. Storm.	Mr. Curran.
Mr. McArthur.	
Mr. Springweiler.	
Mr. Redman.	

**On Counties, Towns and Villages, their Organization and Government:**

Mr. C. B. McLaughlin, Chairman.	Mr. Maybee.
Mr. Floyd.	Mr. Kimmey.
Mr. Doty.	Mr. Peabody.
Mr. Mereness.	Mr. Titus.
Mr. Arnold.	Mr. Burr.
Mr. Nichols.	Mr. Herzberg.
Mr. McKinstry.	Mr. T. W. Fitzgerald.
Mr. G. W. Clark.	
Mr. Carter.	
Mr. C. A. Fuller.	

**On County, Town and Village Officers, other than Judicial, their Election or Appointment, Tenure of Office, Compensation, Powers and Duties:**

Mr. Parkhurst, Chairman.	Mr. Sullivan.
Mr. Lester.	Mr. Rogers.
Mr. Mantanye.	Mr. Emmet.
Mr. Moore.	Mr. Ohmeis.
Mr. Barnum.	Mr. Titus.
Mr. Church.	Mr. Kerwin.
Mr. Redman.	Mr. Gilleran.
Mr. Vogt.	
Mr. Jacobs.	
Mr. Hecker.	

### On State Prisons and Penitentiaries and the Prevention and Punishment of Crime:

Mr. McDonough, Chairman.	Mr. Koch.
Mr. Barhite.	Mr. Rowley.
Mr. Crosby.	Mr. Campbell.
Mr. O'Brien.	Mr. Meyenborg.
Mr. McArthur.	
Mr. Allaben.	
Mr. Andrew Frank.	

### On Corporations and Institutions not otherwise herein Specified:

Mr. Hawley, Chairman.	Mr. McCurdy.
Mr. Dickey.	Mr. Veeder.
Mr. Barrow.	Mr. Banks.
Mr. H. A. Clark.	Mr. Davenport.
Mr. W. H. Steele.	Mr. Roche.
Mr. Lyon.	Mr. Forbes.
Mr. Storm.	Mr. Emmet.
Mr. C. A. Fuller.	
Mr. Van Denberg.	
Mr. Doty.	

### On Currency, Banking and Insurance:

Mr. Augustus Frank, Chairman.	Mr. Sandford.
Mr. Davis.	Mr. Fields.
Mr. Whitmyer.	Mr. Durnin.
Mr. M. E. Lewis.	Mr. Riggs.
Mr. Phipps.	
Mr. Barnum.	
Mr. Galinger.	

### On the Militia and Military Affairs:

Mr. Hedges, Chairman.	Mr. Gibney.
Mr. Davis.	Mr. Cochran.
Mr. Ackerly.	Mr. Goeller.
Mr. Galinger.	

### On Education and Funds Relating Thereto:

Mr. Holls, Chairman.	Mr. Deyo.
Mr. Durfee.	Mr. Sandford.
Mr. E. R. Brown.	Mr. Peck.
Mr. Hirschberg.	Mr. C. S. Truax.
Mr. Hill.	Mr. Platzek.
Mr. McDonough.	Mr. Gilleran.
Mr. McIntyre.	Mr. Towns.
Mr. Tibbetts.	
Mr. Cornwell.	
Mr. Fraser.	

**On Charities and Charitable Institutions:**

Mr. Lauterbach, Chairman.	Mr. Giegerich.
Mr. C. B. McLaughlin.	Mr. Danforth.
Mr. I. Sam Johnson.	Mr. Durnin.
Mr. Cassidy.	Mr. C. S. Truax.
Mr. A. B. Steele.	Mr. Forbes.
Mr. Phipps.	Mr. Peabody.
Mr. Powell.	Mr. Riggs.
Mr. Arnold.	
Mr. Manley.	
Mr. Kellogg.	

**On Industrial Interests:**

Mr. Gilbert, Chairman.	Mr. C. H. Truax.
Mr. M. E. Lewis.	Mr. Crimmins.
Mr. Barhite.	Mr. Osborn.
Mr. Wiggins.	Mr. Ohmeis.
Mr. Coleman.	Mr. Trapper.
Mr. Faber.	Mr. Roderick.
Mr. Ackerly.	Mr. Goeller.
Mr. Lester.	
Mr. Carter.	
Mr. Hecker.	

**On Salt Springs:**

Mr. Alvord, Chairman.	Mr. Williams.
Mr. Springweiler.	Mr. Mulqueen.
Mr. Vogt.	Mr. Farrell.
Mr. Allaben.	

**On the Relations of the State to the Indians:**

Mr. C. H. Lewis, Chairman.	Mr. Platzek.
Mr. Porter.	Mr. J. I. Green.
Mr. Church.	Mr. Mullen.
Mr. Turner.	

**On Future Amendments and Revisions of the Constitution:**

Mr. Marshall, Chairman.	Mr. Griswold.
Mr. Powell.	Mr. Parmenter.
Mr. Spencer.	Mr. Meyenborg.
Mr. Andrew Frank.	

**On Revision and Engrossment:**

Mr. Foote, Chairman.	Mr. Holcomb.
Mr. Hawley.	Mr. Roderick.
Mr. W. H. Steele.	Mr. Farrell.
Mr. Woodward.	

## On Privileges and Elections:

Mr. Hirschberg, Chairman.	Mr. Deady.
Mr. Cookinham.	Mr. Countryman.
Mr. Lester.	Mr. Chipp.
Mr. Crosby.	Mr. Gibney.
Mr. Foote.	
Mr. Lincoln.	
Mr. Durfee.	

## On Printing:

Mr. Hamlin, Chairman.	Mr. Marks.
Mr. Pool.	Mr. Fields.
Mr. McKinstry.	Mr. Beckwith.
Mr. Turner.	

## On Contingent Expenses:

Mr. Lyon, Chairman.	Mr. J. I. Green.
Mr. E. A. Brown.	Mr. Tekulsky.
Mr. Whitmyer.	Mr. Curran.
Mr. Faber.	

## On Rules:

The President, Chairman.	Mr. Bowers.
Mr. Root.	Mr. Deyo.
Mr. Acker.	Mr. Griswold.
Mr. Davies.	
Mr. McMillan.	

## DOCUMENT NO. 5.

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### REPORT OF THE COMMITTEE ON JUDICIARY.

#### *To the Convention:*

The Committee on Judiciary return herewith the writ of prohibition issued out of the Supreme Court commanding the Convention "to desist and refrain from any further proceedings in the matter of proving, examining, investigating, deciding or judging upon the qualification or election of Herman F. Trapper, or abridging or intermeddling with the rights or privileges of said Herman F. Trapper as a member of said Convention or as a delegate of said Convention" and reports thereon:

The Convention has been created by the direct action of the people and has been by them vested with the power and charged with the duty to revise and amend the organic law of the State.

The function with which it is thus charged is a part of the highest and most solemn act of popular sovereignty and in its performance the Convention has and can have no superior but the people themselves.

No court or legislative or executive officer has authority to interfere with the exercise of the powers or the performance of the duties which the people have enjoined upon this, their immediate agent.

The Convention has been expressly authorized by the existing Constitution and the vote of the people to revise and amend the Constitution. It has also, by necessary implication, been endowed by the same Constitution and vote, with all the powers essential to the exercise of the powers expressly conferred.

Among the powers so conferred by necessary implication, are some of a judicial nature affecting the organization and existence of the Convention itself. Among these are the power to discipline its members, to repress disorder, to try, condemn and punish persons who disobey its process, and to judge of the qualifications and elections of its members.

These powers are not included among those conferred upon the judiciary in the general distribution of powers to the three great departments, for the purposes of the ordinary government of the State under the Constitution.

They are deemed to be inherent in the legislative bodies which emanate directly from the people, because necessary to their independence and effective action. They are conferred upon every such body by the simple act of its creation and without the necessity of an express grant.

This was the common law of England and of the Colony of New York on the 19th of April, 1775. It has always been the law of this State and universally throughout the United States.

A Constitutional Convention is a legislative body of the highest order. It proceeds by legislative methods. Its acts are legislative acts. Its function is not to execute or interpret laws, but to make them. That the consent of the general body of electors may be necessary to give effect to the ordinances of the Convention, no more changes in their legislative character, than the requirement of the Governor's consent, changes the nature of the action of the Senate and Assembly.

It is far more important that a Constitutional Convention should possess these safeguards of its independence than it is for an ordinary Legislature; because the Convention's acts are of a more momentous and lasting consequence and because it has to pass upon the power, emoluments and the very existence of the judicial and legislative officers who might otherwise interfere with it. The Convention furnishes the only way by which the people can exercise their will, in respect of these officers, and their control over the Convention would be wholly incompatible with the free exercise of that will.

That the Constitutional Conventions of this State do possess among these inherent powers the power to judge of the qualifications and elections of their members has been expressly declared by high judicial authority and by the Legislatures of 1866, 1893 and 1894. It is in accordance with all approved text writers, and with the general usage of other States. We know of no authority whatever to the contrary. It is a necessary conclusion from the underlying principles upon which our government rests.

Our conclusion is,

That the people of this State have conferred upon the Convention the exclusive authority and have charged upon it the duty, to judge of the qualification and election of Herman F. Trapper.

That the members of the Convention by accepting the office, and by their oaths of office, have bound themselves to perform the duty, of passing upon the election of Mr. Trapper; and no other course is open to them, but to proceed with the performance thereof.

We report herewith, for the information of the Convention, a full statement of the law prepared by a sub-committee, and adopted by this committee.

Believing that the writ of prohibition heretofore issued *ex parte*, is the result of a misapprehension, we recommend that the views of the Convention, as embodied in the foregoing report, be transmitted by the Secretary of the Convention, to the Supreme Court, with a respectful remonstrance against its entertaining jurisdiction.

ELHIU ROOT,  
*Chairman.*

## REPORT OF THE SUB-COMMITTEE ADOPTED AND REPORTED BY THE JUDICIARY COMMITTEE.

### *To the Committee on Judiciary:*

A question of high privilege is presented for the consideration of the Convention. Herman F. Trapper, who claims to be a duly elected member of this Convention, has applied to the Supreme Court, for a writ of prohibition whereby he seeks to restrain this body from taking any further action touching his rights to a seat in the Convention, and to require it "to refrain from any acts interfering with or in any manner abridging the rights of the petitioner as a member of the said Convention, so long as the petitioner shall comply with the rules and regulations adopted for the government of the said Convention." He denies the jurisdiction of this body to determine the contest, which is now pending, with respect to his right to a seat in the Convention, on the ground that such determination involves a judicial act, and that the Supreme Court alone possesses the jurisdiction to decide all controversies relative to the elections, returns and qualifications of members of the Constitutional Convention.

The remedy to which resort has been taken to restrain the Convention from its contemplated action is a writ of prohibition, issued out of the Supreme Court. The issuance of this writ involves the assertion by the tribunal whence it emanates, that the body to whom it is directed is an inferior tribunal, usurping powers which it does not possess, and encroaching upon a jurisdiction beyond its purview. (*Quimbo Appo v. People*, 20 N. Y., 531; *Thompson v. Tracy*, 60 N. Y., 31.)

The logical conclusion from this definition must be, that in order to warrant judicial interference in the pending juncture, it must be determined, first, that the Constitutional Convention is



inferior to the Supreme Court, and, secondly, that it has no jurisdiction to pass upon the qualifications and elections of its members.

We proceed to the consideration of these questions. Prior to the adoption of the Constitution of 1846, the organic law of this State contained no provision for a Constitutional Convention, although such conventions were ordered by the people pursuant to recommendations of the Legislature and held in 1801, 1821, and 1846.

Article 13, section 2, of the Present Constitution provides:

"At the general election to be held in the year 1866 and in each twentieth year thereafter, and also at such time as the Legislature may by law provide, the question, 'Shall there be a Convention to revise the Constitution and amend the same?' shall be decided by the electors qualified to vote for members of the Legislature, and in case a majority of the electors so qualified, voting at such election shall decide in favor of a Convention for such purpose, the Legislature, at its next session, shall provide by law for the election of delegates to such Convention."

The Constitutional Convention is thus one of the recognized elements of our constitutional government. Whenever the people shall determine that such a Convention is to be held the duty is devolved upon the Legislature to provide by law for the election of delegates to the Convention. The voice of the people calls the Convention into being. Their mandate is the warrant by which the Convention acts. The power of the people to revise and amend their Constitution is exercised by them in a Convention created by their fiat, through the delegates elected by them.

Under the present Constitution changes in the organic law can be originated in but one of two methods. Either by means of a Constitutional Convention called into existence by the people, or by the action of the majority of the members elected to a Senate and Assembly, subsequently referred to another Legislature to be chosen at the next general election of Senators, and agreed to by a majority of all the members elected to each house. Should two Senates and two Assemblies fail to concur in any proposed amendment to the Constitution, no change can be wrought except in the manner provided by article 13, section 2.

It is of the greatest importance that a body chosen by the people of this State to revise the organic law of the State, should be as free from interference from the several departments of government as the legislative, executive and judiciary are, from interference by each other. Unless this were so, the will of the people might easily be nullified by the existing judiciary or Legislature.

Should the latter attempt to enact a law prohibiting the Constitutional Convention from restricting the existing powers of the Legislature, the act would be at once recognized as an unwarranted invasion of the rights of the people. How does the action of a court which seeks to restrain the Convention in the transaction of its business differ from the case supposed? It might happen, as it has frequently occurred, in other public assemblies, that the members elected to a Constitutional Convention were so narrowly divided in sentiment, that upon a single vote might depend the passage or defeat of a measure abolishing an existing court. If a writ of prohibition could tie the hands of the Convention, a judge of some court whose existence was at stake, might perpetuate his tribunal by the allowance of a writ identical with that which has been served upon this Convention. To sustain such a contention would amount to a nullification of the will of the people; would perpetuate an institution against the express wishes of the sovereign.

There is high authority in support of the proposition that a Constitutional Convention, is in effect a gathering of the people in their sovereign capacity. Such was the declaration of Mr. Livingston, in the New York Convention of 1821. He said: "The people are here themselves. They are present by their delegates. No restriction limits our proceedings. We are standing upon the foundations of society." In 1836 George M. Dallas, of Pennsylvania, declared a Constitutional Convention to be "The provided machinery of peaceful revolution." He said, "It is the civilized substitute for intestine war. When ours shall assemble it will possess within the territory of Pennsylvania every attribute of absolute sovereignty, except such as may have been yielded and are embodied in the Constitution of the United States. What may it not do? It may reorganize our entire system of social existence, terminating and proscribing what is deemed injurious, and establishing what is preferred."

In the Illinois Convention of 1847, Mr. Peters said, "We are the sovereignty of the State. We are what the people of the State would be if they were congregated here in one mass meeting. We are what Louis XIV said he was, 'we are the State.'"

The Constitutional Convention, held in Pennsylvania in 1872, was created by an act of the Legislature of that State, and did not derive authority in any manner from the Constitution. The statute provided a method for the submission of the work of the Convention to the people. The Convention adopted an entirely different method, which was declared illegal by the Supreme

Court of Pennsylvania, in *Wells v. Bain* (75 Pa. St., 39); *Woods Appeal* (75 Pa. St., 59); upon grounds not applicable to a Convention ordered as this Convention is, by the people under authority of the Constitution. The action of the courts was, nevertheless, considered a breach of the prerogatives of the Convention and by the almost unanimous vote of the Convention, the report of a committee consisting of some of the ablest lawyers in the State was adopted, the material portions of which were as follows:

"A proceeding to which the Convention was a party, has, in effect and result, brought into controversy some of the fundamental principles of constitutional government. The opinion that has been pronounced in this proceeding contains doctrines, which, in our judgment, ought not to be left unchallenged. We believe them to be subversive of some of the absolute rights of the people. We, therefore, submit for the action of the Convention, the people, as determined by their vote under the act of 1871,

"1. Resolved, That this Convention was called by authority of the people, as determined by their vote under the act of 1871, declaring that a Convention should be called to amend the Constitution of this Commonwealth; and that this vote was a mandate to the Legislature, which that body was not at liberty to disobey or modify.

"2. Resolved, That the Constitution of the State is the only recognized form of its government, and the people having expressly reserved to themselves the right to alter, reform or abolish their government in such manner as they think proper, and declared that such right shall forever remain inviolate, this Convention deems it to be its duty to declare that it is not in the power of any department of an existing government to limit or control the powers of a Constitutional Convention called by the people to reform their Constitution; and that the Convention, subject to the Constitution of the United States is answerable only to the people from whom it derived its power."

Jamieson in his work on Constitutional Conventions, which was written with the express purpose of refuting the claims of those who asserted the identity of the Convention and the people admits that in the United States the Constitutional Convention belongs to the legislative class of assemblies. He says at section 420, "By this is meant that its proper function is to elaborate to a certain extent to be determined by the tenor of its commission, the fundamental law, much as the Legislature enacts the ordinary municipal law. Of these two species of law, the distinction between which has been already explained, it is the most import-

ant thing to note, that the one denominated fundamental law is, generally speaking, the work only of a Convention, a special and extraordinary assembly, convening at no regularly recurring periods, but whenever the harvest of constitutional reforms has become ripe, while, on the other hand, the ordinary statute law, whose provisions are tentatory and transient, is, regularly at least, the work of a Legislature, a body meeting periodically at short intervals of time. It is thoroughly settled that, under our Constitutions, State and Federal, a Legislature cannot exercise the functions of a Convention—cannot in other words, take upon itself the duty of framing, amending, or suspending the operation of the fundamental law. Being the supreme law of the land, all departments of the government are subject to its control, for from and under it they derive both their commissions and their existence; and to permit either of them to modify it would be to invert the relations of dependence on which the safety of the whole system depends. This has never been doubted since the early days of the republic.”

In *Goodrich v. Moore* (2 Minn., 61) the Supreme Court of that State declared that a Constitutional Convention is the highest legislative assembly recognized in law, invested with the power of enacting or framing the supreme law of the State. It has full control of all its proceedings, and may provide in such manner as it sees fit, to perpetuate its records; and, although the Convention may have been called together by legislative authority, that body has no right to select officers for the Convention or otherwise control the transaction of its legitimate business. Mr. Justice Atwater, speaking for the court, said: “The admission of such a right in the Legislature would place the Convention under its entire control. \* \* \* It would have less power than a town meeting, and be incompetent to perform the objects for which it convened. It would be absurd to suppose a Constitutional Convention had only such limited authority. \* \* \* It must have plenary power for this and all the incidents thereof. The fact that the Convention assembled by the authority of the Legislature renders it in no respect inferior thereto, as it may well be claimed whether, had the Legislature refused to make provision for calling a Convention, the people in their sovereign capacity, would not have had the right to have taken such measures for confirming and adopting the Constitution as to them seemed meet.”

In *Loomis v. Jackson* (6 W. Va., 708), the court reached the following conclusions upon a similar question: “First, that a

Constitutional Convention lawfully convened does not derive its power from the Legislature, but from the people. Second, that the powers of a Constitutional Convention are in their nature sovereign powers. Third, that the Legislature can neither limit nor restrict them in the exercise of these powers."

Treating the Constitutional Convention then, as a legislative body, whose function is the revision and amendment of the Constitution, the question arises whether, in the absence of express constitutional grant, it is precluded from adjudging the election and qualification of its members.

From what has been already said, it is manifest that the existence of such a power is essential to the preservation of its efficiency; that the intervention of the executive, legislative or judicial departments of the government in the deliberations of the Convention and in the conduct of its business would be fraught with great danger, and would tend to destroy that independence which is so essential to the proper performance of the high duties imposed upon it by the people. The sessions of the Convention must necessarily be of short duration. The public welfare demands expedition. The delay incident to the trial of an election contest before a judicial tribunal, conducted in accordance with the usual forensic methods, would practically lead to a great public injury. It is, therefore, important that the power to render a speedy, final and summary decision, should be invested in the body which is immediately concerned in securing its own efficient action.

It can hardly be contended that this body, which, by its single act, may perform the function of originating changes in the organic law, was not intended by the people to have all the powers of self-protection and independence deemed necessary for the legislature, which is permitted to exercise that high prerogative only through the concurrence of two successive Senates and Assemblies. While it is true that the power of making such determination is by article 3, section 10, of the Constitution, expressly conferred upon the Senate and Assembly, and that by the Constitution of the United States similar powers are also vested in both houses of Congress; yet, it is well settled that such provisions are only declaratory, and that even in the absence of such express authority, the inherent power to act as the judge of the qualifications and elections of its members exists in every deliberate assembly, emanating directly from the people, even though it involves the exercise of judicial power. An examination of the authorities on the subject may be useful.

May, in his work on the "Law of Parliament" (8th ed., p. 56), says:

"Another important power peculiar to the Commons, is that of determining all matters touching the election of their own members. This right has been regularly claimed and exercised since the reign of Queen Elizabeth, and probably in earlier times, although such matters have been ordinarily determined in Chancery. Their exclusive right to determine the legality of the returns and the conduct of returning officers in making them, was fully recognized in the case of *Barnardiston v. Soane*, by the Court of Exchequer Chamber in 1674 (6 Howell, St. Tr., 1092), by the House of Lords in 1689 (*ib.*, 1119), and also by the courts, in the cases of *Onslow* in 1680 (2 Vent., 37), and of *Prideaux v. Morris* in 1702 (2 Salk., 502; 1 Lutw., 82; 7 Mod., 13)."

Perhaps the most instructive account of the possession and exercise of this parliamentary power is that given by Hallam, who, while speaking of the reign of Elizabeth, says, in his *Constitutional History of England*, volume 1, page 273: "The Commons asserted in this reign, perhaps for the first time, another and most important privilege, of determining all matters relative to their own elections."

"Difficulties of this nature, had, in former times, been decided in Chancery, from which the writ issued, and into which the return was made. Whether no cases of interference on the part of the house had occurred, it is impossible to pronounce, on account of the unsatisfactory state of the rolls and journals of Parliament under Edward IV, Henry VII and Henry VIII. One remarkable entry may be found, however, in the reign of Mary, when a committee is appointed 'to inquire if Alexander Nowell, prebendary of Westminster, may be of the house, and it is declared by them next day that an Alexander Nowell, being prebendary in Westminster, and thereby having a voice in the Convocation House, cannot be a member of this house; and so agreed by the house and the Queen's writ to be directed for another Burgess in his place.' (*Journals*, I, Mary, p. 27.) Nothing further appears on the record bill."

"In 1586, the house appointed a committee to examine the state and circumstances of the returns for the county of Norfolk. The fact was that the Chancellor had issued a second writ for this county on the ground of some irregularity in the first return, and a different person had been elected. Some notice having been taken of this matter in the Commons, the Speaker received orders, signifying to Her Majesty's displeasure that the house had been troubled

with a thing impertinent for them to deal with, and only belonging to the charge and office of the Lord Chancellor, whom she had appointed to confer with the judges about the return for the county of Norfolk, and to act therein according to justice and right. The house, in spite of this peremptory inhibition, proceeded to nominate a committee to examine into and report the circumstances of these returns, who reported the whole case, with their opinion that those elected on the first writ should take their seats; declaring, further, that they understood the Chancellor and some of the judges to be of the same opinion, but that they had not thought it proper to inquire of the Chancellor what he had done, because they thought it prejudicial to the privilege of the house to have the same determined by others than such as were members thereof. And though they thought very reverently of the said Lord Chancellor and judges, and knew them to be competent judges in their places, yet in this case they took them not for judges in Parliament in this house, and thereupon required that the members, if it were so thought good, might take their oaths and be allowed of by force of the first writ, as allowed by the censure of the house, and not as allowed of by the said Lord Chancellor and judges; which was agreed unto by the whole house. This judicial trial over their elections was not the last. A committee was appointed in the session of 1589 to examine into sundry abuses of returns, among which is enumerated that some are returns for new places, and several instances of the house's deciding on elections occur in subsequent Parliaments."

Mr. Cushing, in his work on the Law and Practice of Legislative Assemblies, chapter 6, section 1, page 146, says:

"The present Constitution of the House of Commons is, to a considerable extent the result of a series of struggles between it, on the one hand, and the Sovereign or Lords, or both on the other. One of the earliest of these conflicts and one of the most interesting, is that which terminated in the establishment of the right of the Commons, to be the exclusive judges of the returns, elections, and qualifications, of their own members. This right, after having been claimed and exercised, at one time by the King and Council, at another by the House of Lords, and again, by the Lord Chancellor, was declared by a resolution of the Commons, in 1624, and has ever since been admitted to belong exclusively to the house itself, as "its ancient, natural, and undoubted privilege." (Glanville, LXXXIII, 60.)

"This power is so essential to the free election and independent existence of a legislative assembly that it may be regarded as a

necessary incident to every body of that description, which emanates directly from the people; it is also, out of abundant caution, conferred upon or guaranteed to most of the legislative assemblies of the United States, by express constitutional provisions."

Mr. Justice Story, in his work on the Constitution, section 833, says:

"It is obvious that a power must be lodged somewhere to judge of the elections, returns and qualifications of the members of each house composing the Legislature; for otherwise there could be no certainty as to who were legitimately chosen members, and any intruder or usurper might claim his seat, and thus trample upon the rights, privileges and liberties of the people. Indeed, elections would become, under such circumstances, a mere mockery, and legislation the exercise of sovereignty by any self-constituted body. The only possible question on such a subject is as to the body in which such a power shall be lodged. If lodged in any other than the legislative body itself, its independence, its purity, and even its existence and action might be destroyed or put into imminent danger. No other body but itself can have the same motive to preserve and perpetuate these attributes; no other body can be so perpetually watchful to guard its own rights and privileges from infringement, to purify and vindicate its own character, and to preserve the rights, and to sustain the free choice of its constituents. Accordingly, the power has always been lodged in the legislative body by the uniform practice of England and America."

In volume 1, page 235, of Kent's Commentaries, the author says:

"Each house is made the sole judge of the election and return and qualification of its members. The same power is vested in the British House of Commons, and in the Legislatures of the several States, and there is no other body known to the Constitution, to which such a power might be safely trusted. It is requisite to preserve a pure and genuine reputation, and to control the evils of irregular, corrupt and tumultuous elections; and as each house acts in those cases in a judicial character, its decisions, like the decisions of any other court of justice ought to be regulated by known principles of law, and strictly adhered to, for the sake of uniformity and certainty."

Judge Cooley, in his Constitutional Limitations (6th ed., at p. 158), says:

"There are certain matters which each house determines for itself and in respect to which its decision is conclusive. It chooses its own officers, except where, by Constitution or statute



other provision is made; it determines its own rules of proceeding; it decides upon the election and qualification of its own members. These powers it is obviously proper should rest with the body immediately interested, as essential to enable it to enter upon and proceed with its legislative functions without liability to interruption and confusion. To determine questions concerning contested seats, the house will exercise judicial power, but generally in accordance with a course of practice which has sprung from the precedents in similar cases, and no other authority is at liberty to interfere."

The powers asserted by the House of Commons were also recognized in the Colonial Assemblies, one of the first cases being that recorded in Smith's History of the Province of New York, page 223, published in 1776, where the author says:

"All these who opposed you were disobliged with the Governor; among those Mr. DeLancey was the most considerable for his wealth and popular influence. He was very rigid in his religious profession, one of the first builders, and by far the most generous benefactor of the French Church, and therefore left it with the utmost reluctance. Mr. Burnett, before this time, had considered him as his enemy, because he had opposed the prohibition of the French trade; and this led him into a step, which as it was a personal indignity, Mr. DeLancey could never recollect without resentment. This gentleman was returned for the city of New York in the room of a deceased member, at the meeting of the Assembly in 1725. When he offered himself for the oaths, Mr. Burnett asked him how he became a subject of the Crown? He answered, that he was denized in England, and His Excellency dismissed him, taking time to consider the matter. Mr. DeLancey then laid before the house an act of a notary public, certifying that he was named in a petition of denization, granted in the reign of James the Second—a patent of the same kind, under the great seal of this province, in 1686—and two certificates, one of his having taken the oath of allegiance according to an act passed here in 1683, and another of his serving in several former Assemblies. The Governor, in the meantime, consulted the chief justice and transmitted his opinion to the house, who resolved in favor of Mr. DeLancey.

"What Colonel Morris' opinion was, I have not been able to discover. Governor Burnett's conduct was thought to be unconstitutional, and an invasion of the rights of the Assembly, who claimed the exclusive privilege of determining the qualifications of their own members." (Vol. 5, Documents relating to N. Y.

Colonial History, p. 761; Vol. 8, Documents relating to N. Y. Colonial History, pp. 192, 319.)

In 1 Hammond's Political History of New York, 62, the author says:

"By the Constitution, article 12, in connection with article 9, the Senate are constituted judges of their own members. The Colonial Assemblies had always exercised the right of judging whether their members were duly elected; a right which seems to me inherent in all representative bodies."

Some of these authorities were cited with approval by Judge Folger, in *People ex rel. Hatzel v. Hall* (80 N. Y., 121), where, after referring to the powers of the House of Commons, as defined by Cushing, he says: "The same author says that the power is so essential to the free election and independent existence of a legislative assembly that it may be regarded as a necessary incident to every body of that description which emanates directly from the people; and that the constitutional provisions are out of abundant caution."

In 1846, while a bill relating to the appointment of delegates to the Convention, which had been provided for in the previous year, was pending before the Legislature, the Assembly referred the proposed act to the justices of the Supreme Court, requesting them to communicate forthwith to the House whether in their opinion the delegates to be chosen to the Convention should be selected according to the old apportionment or the new. The court, consisting of Judges Bronson, Beardsley and Jewett, in the course of their opinion, rendered in response to the legislative request, used the following significant language:

"The Legislature is not supreme. It is only a part of that absolute sovereignty which resides in the whole people. Like other departments of the government, it acts under a delegation of powers, and cannot rightfully go beyond the limits which have been assigned to it. This delegation of powers has been made by the fundamental law, which no one department of the government, nor all the departments united, have authority to change. That can only be done by the people themselves. A power has been given to the Legislature to propose amendments to the Constitution, which, when approved and ratified by the people, became a part of the fundamental law. But no power has been delegated to the Legislature to call a Convention to revise the Constitution. That is a measure which must come from, and be the act of, the people themselves. Neither the calling of a Convention nor the

Convention itself is a proceeding under the Constitution. It is above and beyond the Constitution. Instead of acting under the forms and within the limits prescribed by that instrument, the very business of a Convention is to change those forms and boundaries as the public interest may seem to inquire. A Convention is not a government measure, but a movement of the people, having for its object a change, either in whole or in part, of the existing form of government."

"As the whole people have not only omitted to confer any power on the Legislature to call a Convention, but have also prescribed another mode of amending the organic law, we are unable to see that the act of 1845 had any obligatory force at the time of its enactment. It could operate by way of advice, or recommendation, and not as law. It amounted to nothing more than a proposition or suggestion to the people to decide whether they would or would not have a Convention. That question the people have settled in the affirmative, and the law derives its obligation from that act and not from the power of the Legislature to pass it."

"The people have not only decided in favor of a Convention, but they have determined that it shall be held in accordance with the provisions of the act of 1845. No other proposition was before them, and, of course, their votes could have had reference to nothing else. They have decided on the time and manner of electing delegates and how they shall be apportioned among the several counties."

"If the act of the last session is not a law of the Legislature, but a law made by the people themselves, the conclusion is obvious that the Legislature cannot annul it, nor make any substantial change in its provision. If the Legislature can alter the rule of representation, it can repeal the law altogether, and thus defeat a measure which has been willed by a higher power."

"A change in the fundamental law, when not made in the form which the law has prescribed, must always be a work of the utmost delicacy. Under any other form of government than our own, it could amount to nothing less than a revolution. The greatest care should, therefore, be taken that nothing be done which can give rise to doubts or difficulties in the choice of delegates, or the harmonious organization and action of the Convention. A controversy about the number of delegates to which any county is entitled may lead to irregular and disorderly proceedings at the election, and an imperfect expression of the will of the electors in the choice of delegates. It may embarrass the inspectors of elections and the canvassers of votes. It may also tend to disorder in the Conven-

tion, where the question must finally be settled, who are and who are not members of the body."

This language is the more significant in view of the fact that neither the act of 1845 nor the act of 1846 contained a provision similar to that found in the act of 1893, conferring upon the Convention the power to adjudge the qualifications and elections of its members.

That a body of this character must *ex necessitate*, be invested with quasi-judicial powers with respect to its organization and the conduct of its business, although there is no express grant of power in the Constitution, becomes further evident from the numerous adjudications recognizing the right of legislative bodies to expel their members, and to punish for contempt, not only those who are constituents of the body exercising the power, but also strangers who may be guilty of disorderly conduct, recusant witnesses, and others who perform acts tending to obstruct its proceedings.

In *Hiss v. Bartlett* (3 Gray, Mass., 473), Chief Justice Shaw said, in a case involving the right of the Legislature to expel one of its members:

"There is nothing to show that the framers of the Constitution intended to withhold this power. It may have been given expressly in other States, either *ex majori cautela*, or for the purpose of limiting it by requiring a vote of more than a majority."

"It is suggested that the true remedy is by impeachment. But that form of proceeding has never been applied to members of the Legislature; and would be slow, laborious and expensive, and inadequate to the object sought to be attained. Impeachment lies only for the purpose of punishment, by deprivation of office, and disqualification to hold office, leaving the offender still liable to indictment, if the offense be indictable."

"The power of expulsion is a necessary and incidental power, to enable the house to perform its high functions and it is necessary to the safety of the State. It is a power of protection. A member may be physically, mentally or morally, wholly unfit; he may be afflicted with a contagious disease, or insane, or noisy, violent and disorderly, or in the habit of using profane, obscene or abusive language. It is necessary to put extreme cases to test a principle. If the power exists, the house may necessarily be the sole judge of the exigency which may justify and require its exercise. As to the law and custom of Parliament, the authorities cited clearly show that the jurisdiction to commit and also to expel, has long been recognized, not only in Parliament, but in the courts of law, for the purpose of protection and punishment."

"But there is another consideration, which seems to render it proper to look into the law and practice of Parliament, to some extent. I am strongly inclined to believe, as above intimated, that the power to commit and to expel its members was not given to the House and Senate respectively, because it was regarded as inherent, incidental and necessary, and must exist in every aggregate and deliberative body, in order to the exercise of its functions, and because without it such a body would be powerless to accomplish the purposes of its Constitution; and therefore any attempt to express or define it would impair rather than strengthen it. This being so, the practice and usage of other legislative bodies, exercising the same functions, under similar exigencies; and the reasons and grounds, existing in the nature of things, upon which their rules and practice have been founded, may serve as an example and as some guide to the adoption of good rules, when the exigencies arise under our Constitution. But independently of parliamentary customs and usages, our legislative houses have the power to protect themselves, by the punishment and expulsion of a member."

In *People ex rel. McDonald v. Keeler* (99 N. Y., 463), the power of the Senate to punish a witness summoned before an investigating committee was involved. The proceedings were instituted under the provisions of the Revised Statutes, which were, however, claimed to be unconstitutional; in that they permitted the Senate to exercise a power judicial in its nature, and that the Constitution, being silent on the subject, intended to withhold from the Legislature the right to exercise such judicial functions. The objection was, however, disapproved by the court, Judge Rapallo saying:

"At the time of their enactment, as appears by the note of the revisers, it was assumed that although the State Constitution of 1821 was silent upon the subject of the privileges of the Legislature or of either house, yet that it was not intended to deprive the two houses of the power which the revisers characterized as indispensable, of punishing contempts, which it had then been determined by the Supreme Court of the United States, in the case of *Anderson v. Dunn* (6 Wheat., 204), was possessed by the Houses of Congress by necessary implication, the Constitution of the United States being equally silent upon the subject, and it was deemed proper to provide a legislative definition of those privileges of the houses and their members, the breach of which should be regarded as a contempt. With this view the new provisions were framed. (See note to tit. 2, chap. 7, part 1, R. S.)"

"The Constitution of the United States declares, in terms, that the judicial power of the United States should be vested in one Supreme Court, and such inferior courts as the Congress may from time to time order and establish. Although no similar declaration is contained in the Constitution of this State, still it is a recognized principle that in the division of power among the great departments of government, the judicial power has been committed to the judiciary, as the executive power has been committed to the executive department, and the legislative to the Legislature, and that body has no power to assume the functions of the judiciary to determine controversies among citizens or even to expound its own laws, so as to control the decisions of the courts in respect to past transactions. (*People v. Supervisors*, 16 N. Y., 432.) To declare what the law shall be is a legislative power; to declare what it is, or has been, is judicial. (*Thompson, J., in Dash v. Van Kleeck*, 7 Johns., 498.) But notwithstanding this general division of powers, certain powers in their nature judicial are by the express terms of the Constitution, vested in the Legislature. The power of impeachment is vested in the Assembly. Each house is made the judge of the qualifications and elections of its own members. The power of removal of certain judicial officers for cause is given by the Constitution to the Senate and Assembly, and involves inquiries judicial in their nature, and by statute certain other officers may be removed by the Senate, on recommendation of the Governor. (1 R. S., 125, section 41.) I think it would be going too far to say that every statute is necessarily void which involves action on the part of either house, partaking in any degree of a judicial character, if not expressly authorized by the Constitution. Where the statute relates to the proceedings of the legislative body itself, and is necessary or appropriate to enable it to perform its constitutional functions, I cannot regard it as such an invasion of the province of the judiciary as should bring it within any implied prohibition of the State Constitution. That instrument contains no express provision declaring any of the privileges of the members of either house, except that for any speech or debate in either house, the member shall not be questioned in any other place. Even the privilege of exemption from arrest during the sessions, is not declared. No power to keep order or to punish members or others for disorderly conduct or to expel a member is contained in the State Constitution, as it is in the Constitution of the United States. All these matters are in this State left under the regula-

tions of the statutes, and there is not even express authority to enact such statutes. (R. S., chap. 7, tit. 2.) The necessity of the powers mentioned is apparent, and is conceded in all the authorities. (See Cooley's Const. Lim., 133), yet it is equally apparent that statutes upon the subject must authorize some action partaking of a judicial character. If that feature is a fatal objection it annuls all the statutory provisions in which it appears. \* \* \*

"The same principle which renders it the duty of the courts to hold legislative action illegal when it unduly encroaches upon the province of the judiciary, forbids interference by the latter with the action of legislative bodies or the exercise of their discretion in matters within the range of their constitutional powers."

In *Wilkens v. Willett* (4 Abb. Ct. App. Dec., 601), the court, considering the general power of Congress to subpoena witnesses to testify before it, and to punish disobedience of its process, said: "That the power exists admits of no doubt whatever. It is a necessary incident to the sovereign power of making laws; and its exercise is often indispensable to the great end of enlightened, judicious and wholesome legislation. The power is rather judicial in its nature, but in a legislative body exists as an auxiliary to the legislative power only. In the earlier history of the country from which our institutions, both of law and legislation, are principally derived, judicial and legislative functions existed in and were exercised by the same body. And when they were afterwards separated, and each came to be exercised by a separate tribunal or body, the legislative body necessarily retained a sufficient amount of the judicial power to enable it to investigate fully and to comprehend thoroughly any and every subject upon which the body proposed to act in its legislative capacity. This included the power to subpoena witnesses to give evidence, to compel them to attend and testify, and to punish for disobedience and contempt in refusing to attend, or in refusing to testify upon attendance. The power to punish for disobedience and contempt is a necessary incident to the power to require and compel attendance."

These authorities are an ample refutation of the claim that the judiciary alone has the right to exercise power judicial in its nature, and that it is necessary that in all cases the right should be expressly conferred.

It is equally well settled that where the power is lodged in a legislative body to judge of the elections, returns and qualifications of its own members, such power is exclusive and cannot by its own consent, or by legislative action, be vested in any other

tribunal or officer, and cannot be questioned by the executive or judicial departments of the government. (Opinion of the Justices, 56 N. H., 570; *State v. Gilmore*, 20 Kan., 551; *State v. Tomlinson*, 20 Kan., 692; *People v. Mahaney*, 13 Mich., 481.)

Thus far the question has been considered upon the theory that the Convention is passing upon the election and qualification of its members, acts in a quasi-judicial capacity. This, however, is by no means conceded. It is merely a power inseparable from, inherent in, and incidental and necessary to, the political powers possessed by the Convention or by any legislative body. Every department of the government and every officer in every department in the performance of his duties must frequently act in a quasi-judicial capacity. Questions of expediency, of public policy, frequently arise, which, although they call for the exercise of judgment and discretion, are not proper subjects of judicial cognizance. Controversies often arise with respect to the organization of a Legislature, and as to which of several governments of a State is the constitutional government. None of these can come within the jurisdiction of the courts for judgment or decision, because these bodies are subject to no judicial authority. A political problem arises which can only be determined by public opinion, compromise or a resort to force. (*Luther v. Borden*, 7 How. [U. S.], 1; *State of Georgia v. Stanton*, 6 Wall., 50; *Jones v. United States*, 137 U. S., 217; *In re Cooper*, 143 U. S.,; *Kerr v. Trego*, 47 Pa. St., 292; *Robertson v. State*, 109 Ind., 79.)

In the first of these cases, Mr. Justice Woodbury, in his dissenting opinion, which, however, on this point, was in entire accord with that of the majority of the court, said:

“Fortunately for our freedom from political excitements in judicial duties, this court can never, with propriety, be called on officially to be the umpire in questions merely political. The adjustment of these things belongs to the people and their political representatives either in the State or the general government.”

So it has been held that the chief executive officer of a State in the exercise of his political or executive powers or the functions which are confided to his discretion by the Constitution, is entirely independent of the judiciary, and the latter cannot use its process either to direct or to prohibit the performance of such executive acts or to regulate the manner of their exercise. (*Commonwealth v. Denison*, 24 How. [U. S.], 66; *In re Dennett*, 32 Maine, 508; *Mauran v. Smith*, 8 R. I., 192; *State v. Governor*, 25 N. J. [Law], 351.)



In the case last cited, Chief Justice Greene said:

"All the powers conferred by the Constitution on the Governor are political powers, all the duties enjoined are political duties. Touching all the powers conferred on the executive, by the Constitution, he is entirely independent of the control of the judiciary, being responsible to the people alone and liable to impeachment for misdemeanor in office.

"While it is the acknowledged duty of courts of justice to exert all their appropriate powers for the redress of a private wrong, it is no less a duty sedulously to guard against any encroachment upon the right or usurpation of the powers of the co-ordinate departments of government in the delicate and complicated machinery of our republican system, it is of the utmost importance that each department of the government should confine itself strictly within the limits prescribed by the Constitution.

"It is obvious that the exercise of the power now invoked, will have a direct and immediate tendency to bring the executive and judicial departments of the government into conflict. It cannot alter the principle that in the present case the Governor assents to the application. We have Mr. Jefferson's authority for saying, that if the Supreme Court had granted a mandamus in the case of *Marbury v. Madison* (1 Cranch, 137), he should have regarded it as trenching on his appropriate sphere of duty; that he had instructed Mr. Madison not to deliver the commission, and that he was prepared, as President of the United States, to maintain his own construction of the Constitution with all the powers of the government against any control that might be attempted by the judiciary, in effecting what he regarded as the rightful powers of the executive and Senate within their peculiar departments. (Jefferson's Works, vol. 4, pp. 75, 317, 372.)"

What is true of the relations between the judicial and the executive departments of the government, is equally true of the relations of the former with the legislative departments. While it is within the undoubted province of the courts to pass upon the constitutionality of acts performed by such bodies, their judicial functions are in suspense until there has been action. To attempt to interfere with the co-ordinate branches of the government so as to prevent them from acting at all, or to prescribe the methods to be pursued, would be a direct attack upon our political system.

Irrespective of these important considerations, there is another reason why the Supreme Court does not possess the right to prohibit the Convention from considering the pending contest. The clause of the Constitution which creates the Constitutional Conven-

tion requires the Legislature "to provide by law for the election of delegates to such Convention." This leaves it within the discretion of the Legislature to regulate the method of conducting the election and of determining the result, so long as it does not infringe upon the powers properly pertaining to the Convention. In the exercise of this authority the Legislature, in the act of 1893, providing for the election of delegates, declared that the Convention should have the power to judge the elections and qualifications of its members. This was a legitimate exercise of the power conferred upon the Legislature by the Constitution. The election provided for was an election subject to the power of the Convention, to pass upon the qualifications and elections of the persons claiming to be elected.

The provision was, moreover, ratified and adopted by the people in electing delegates to exercise the powers so provided for. The election of delegates under this law was the election of officers to exercise this specific power among others. In the words of Judges Bronson, Beardsley and Jewett, above quoted, "The people have not only decided in favor of a Convention, but they have determined that it shall be held in accordance with the provisions of the act."

LOUIS MARSHALL,  
CHARLES H. TRUAX,  
ELIHU ROOT,

*Sub-Committee.*

## DOCUMENT NO. 6.

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### STATEMENT OF THE CONTENTS OF THE COMPILATION WHICH CONTAINS STATISTICS.

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#### STATISTICS.

##### VOLUME I.

Preface.— Short sketches of each of the State departments and bureaus, which make up the State government.

Followed by these statistics:

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10. Expenditures for education and charity.
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List by counties of land belonging to the State, included in forest preserve.

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STATISTICS.

VOLUME II.

The tables of the last State census.

Summaries from the United States census, showing wealth of the State in totals of each class of property.

Summaries from United States census of cities, towns and villages of over 4,000 population, as follows:

Population, assessed valuation, total and per capita, tax levied for all purposes (total rate per capita), debt, less sinking fund, true and assessed value of real estate, taxed and exempt and of taxed.

Tabulated answers to circulars mailed in March, 1894, to the financial officers of cities and villages in the State, asking for statements in each case, showing:

1. The debt of the city or village in detail, giving the character of the obligations outstanding, the date of their maturity, and the rate of interest paid upon them.
2. The tax rate of the village or city since 1860, or the date of the incorporation.

Also, tabulated answers to similar inquiries addressed to the proper town and county officers.

**DOCUMENT NO. 7.**

[COMMUNICATION No. 1.]

(In Response to Resolution 21, Vol. 1, Page 192.)

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**REPORT OF THE COMPTROLLER.**

In conformity with the resolution of Mr. Holls, passed May 23, showing the sources, extent, nature and present investment and income of every fund and property belonging to or controlled by the State, of which either the principal or interest is devoted to educational uses, together with the reasons which have been advanced to me, as chief financial officer of the State, in favor of the abolition of these funds, and also those in favor of their retention and maintenance. Ordered printed and placed on the files of the members.

**STATE OF NEW YORK:**

COMPTROLLER'S OFFICE,

ALBANY, May 24, 1894.

*To the Constitutional Convention:*

GENTLEMEN.—In conformity with the resolution of your honorable body, passed on the twenty-third inst., I beg leave to submit a statement in detail showing the “sources, extent, nature and present investment and income of every fund and property belonging to, or controlled by the State, of which either the principal or interest is devoted to educational uses,” together with the reasons which have been advanced to me, as chief financial officer of the State, in favor of the abolition of these funds, and also those in favor of their retention and maintenance.

Article 9 of the present Constitution of the State provides that “the capital of the common school fund, the capital of the literature fund and the capital of the United States deposit fund shall be respectively preserved inviolate.”

This provision was inserted in our Constitution by the Convention of 1846, and has since remained unchanged, but its essential character was derived from the Constitution of 1821. It seems to have been an expression of the early policy of the State, to wit: the policy of supporting the State government from the revenues of its trust funds. Down to the year 1845 there was a general fund, the revenue of which went to the general support of the

State government; and it is an interesting fact that down to the year 1816 there was practically no tax levy for the support of the State government; it was supported largely from the revenues derived from these funds. From 1816 down to 1845 this general fund gradually decreased, until in the latter year it entirely disappeared and gave place to a general fund debt; and the State debt continued until the year 1878.

It was natural, therefore, that the wise men who labored to establish free schools as a part of our governmental system should have endeavored to make the system permanent by creating a fund for its maintenance. Accordingly, in 1805, an act was passed by the Legislature (chapter 66), which provided that the net proceeds of the first five hundred thousand acres of State lands sold by the Surveyor-General should be appropriated as a permanent fund for the support of the common schools. This was the origin of the common school fund. No distribution of its revenues, however, was made until the year 1815, as the act creating it prohibited any distribution until the annual income should be \$50,000. But from that time to 1845, the revenues derived from this fund provided all the money the State paid toward the support of its schools.

In 1851, after a struggle which is historical, the State committed itself to the policy of levying a State tax for the support of schools, and in 1867 it abolished district rates, and assumed large portions of the burden of school support as a State charge. From that time to this the amount appropriated has steadily increased until for the year 1893 it reached the sum of \$4,340,381.99. In this connection it may be well to note that the total amount expended in this State for educational purposes during the last fiscal year reached \$19,763,962.37. This includes State, municipal and local expenditures. Schedule A annexed shows the amount raised by tax by the State each year for school purposes from 1867 to 1894.

The only increase in the common school fund for many years was the \$25,000 per annum secured to it from the United States deposit fund by the section of the Constitution above cited, if we except the \$500,000 transferred to it from the general fund in 1882. This fund can only be invested in certain classes of securities selected by the Legislature for their safety rather than their profit, and, as wealth has increased, these securities have been in such demand that the rate of interest has been steadily reduced, so that the average annual income from the fund for the ten years, from 1885 to 1894, is nearly \$20,000 less than for the ten years from

1865 to 1875. Schedule B annexed shows the amount of the fund for each of the years since its establishment, and the annual income therefrom.

From these schedules it is apparent that the amount derived from this fund has long ceased to play any important part in the amount annually appropriated for schools.

Schedule D annexed shows the present investment of this common school fund in detail.

The United States deposit fund consists of money turned over to the State under an act of Congress passed June 23, 1836, and its investment was provided for by chapter 150 of the Laws of New York for 1837. By the investment act this fund was to be distributed among the counties in proportion to population, and invested by loan commissioners on real estate security; and this was accordingly done. Since 1880, successive Comptrollers have attempted to reduce the amount of mortgage investment of this fund by declining to reinvest the moneys received in that class of security. The total amount of the fund is \$4,014,520.71, and of this sum \$1,439,557.73 was invested in mortgages October 1, 1893, and the remainder in other and more available securities. Losses from such mortgage investments are constant. Under the section of the Constitution cited the capital must remain inviolate. The losses of capital are made up from the revenue of the fund, thus reducing the amount available for educational purposes.

Schedule C annexed shows the amount of losses in each year since 1873, and the net rate of interest for each year.

The mortgage investments of this fund cannot readily be realized upon, and I am of the opinion that the State should not force payment from its citizens oppressively, and that only as the principal of the mortgage falls due and is paid in should these amounts be covered into the treasury or converted into other class of securities. I am informed that in nearly all of the States which were beneficiaries of this distribution by the federal government in 1836, the money has been covered into the treasury or distributed among the civil divisions of the State, and is simply maintained on the records of such States as a matter of book-keeping. To be sure, the act transferring this fund to the States provides for its return when demanded. But the contingency of such demand would seem to be very remote in view of the fact that even in the terrible financial stress of the war such a measure never received serious consideration; and if the general government should make such demand, the mortgage securities of the fund would be wholly unavailable for meeting payment. It was

in view of their unavailable character that the act providing for the investment of the money, also provided that the Comptroller, in case of demand, might borrow the money necessary to make repayment.

Schedule E annexed shows the investment of the United States deposit fund in detail.

The college land script fund represents the proceeds of the land script received by this State under the terms of chapter 130, United States Laws for 1863, which were accepted by this State by chapter 460 of the Laws of 1863. The purpose of the transfer of the script to the State was to encourage and enable the State to provide "colleges for the benefit of agriculture and the mechanic arts." Under powers conferred by chapter 585 of the Laws of 1865 Cornell University was made the sole beneficiary of the income of this fund. It is understood that the university has complied with the conditions of the grant on its part in a manner satisfactory to the State, and the institution is now so strongly entrenched in public estimation, as well as financially, that the State's contract with it may well be considered permanent. It was contended by the university that the State was obliged to pay to it five per cent on the gross amount of the fund. But the Court of Appeals, in the case of *Cornell v. Davenport* (117 N. Y., 549), holds that the contention was not well founded, and that the State was liable only for what it was able to obtain from a safe investment of the fund.

The amount and present investment of the fund is shown in schedule F, annexed.

The first mention of the literature fund, which I find in our laws, is contained in chapter 38 of the Laws of 1790. By the terms of this act the Regents of the University were empowered to lease certain lands therein specified, and to apply the rents, issues and profits for the better advancement of science and literature in the colleges and academies under their superintendence. By chapter 222 of the Laws of 1819 one moiety of the quit-rents and commutations for any quit-rents were appropriated for the increase of the literature fund. By chapter 228 of the Laws of 1827 bonds and mortgages obtained on sale of any lands belonging to the canal fund, to the amount of \$150,000, were to be appropriated and transferred to this fund. These were the original sources from which the fund arose. It has been increased somewhat by adding premium on securities sold, to the capital, rather than to the income.

Schedule G shows the present amount and investment of the literature fund.

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By section 26, chapter 378, Laws of 1892, the amount derived from this fund is supplemented annually by \$34,000 of the income of the United States deposit fund, and \$60,000 from the general fund, and the total is distributed among the academies and union schools of the State. The number of institutions receiving from this fund for the year 1894 is 375, and the amount received by each goes largely for the purchase of books.

The investment of the common school, United States deposit and literature funds is provided for by the Revised Statutes (8th ed., vol. 1, p. 568, sec. 4), and by chapter 50 of the Laws of 1889. This confines investments to public securities of the United States, of this State, and of the cities, villages and towns, counties and union free school districts of the State.

In the foregoing I have briefly given you the origin, history and the present status of the several funds named in the resolution of your honorable body. In this connection it may not be out of place for me to also briefly lay before the Convention some of the arguments urged for the abolition of these funds, and those advanced in favor of their maintenance. As a general proposition against maintaining these funds it is argued that they do not yield to the State more than three or three and one-half per cent, while the taxpayer who has to borrow money is obliged to pay five per cent and upwards; that there is danger of loss from unfortunate investment, particularly in the United States deposit fund, when the money is invested in real estate mortgages; that these funds may be and have been used for partisan advantage to the detriment of the State.

As to the school fund, it is urged that while it had its origin in a patriotic desire to make permanent provision for a free school system, it has long since ceased to play any conspicuous part in school maintenance, and that it is a relic of a public policy that has long since been abandoned, viz.: the policy of maintaining the State government from the revenues of its permanent funds; in short, that this fund is of little practical benefit to the schools at present.

The same general arguments are urged against the maintenance of the United States deposit fund, with the additional fact that most of the States that received these moneys from the federal government have already made permanent disposition of them. It is also urged that, at this time of depression, when general business is stagnated, when the wheels of industry are silent, when labor is so generally idle, and when the product of the husbandman is bringing less in the market than it costs to produce it, the cover-

ing of a portion of these idle millions into the treasury, thus largely reducing the burden of taxation, would be a measure of public relief that would be appreciated more now than at any other time in the country's history.

On the other hand, it is urged with great force that while these funds have practically outlived the purposes for which they were constituted, they are now performing a great public service, and should be maintained. For several years past it has been the policy of the Comptroller's department to invest these trust funds in school-district, village and town bonds that had been issued for public improvements. In this way sparsely settled and poor school districts have been able to build new school-houses with money obtained from the sale of bonds to the Comptroller that probably could not have been placed anywhere else; villages and towns have been able to dig sewers and build water systems in the same way; towns that have made unfortunate investments in railroad bonds at high rate of interest have been unable to refund their debts at low rates of interest and escape serious embarrassment; in short, that these funds have been of inestimable value to the smaller political subdivisions of the State, and have enabled them to make improvements for the betterment of health and business conditions that could not have been made were it not for the low rates at which the money of these funds could be obtained. At the present time fifty-five civil divisions and eight school districts of the State are enjoying the benefits of these funds, having expended \$5,966,989.72 in the manner indicated above.

In behalf of the literature fund, it is urged that by it a permanent fund is provided for the maintenance of school libraries throughout the State, which are of great value in educational work. Were it not for this fund the money would have to be provided by the Legislature from year to year, which experience has taught would be an uncertain source of supply. There would be great danger that in the struggle for appropriations and for a low tax rate, the appropriation for library books for schools would either be overlooked or pushed aside by more importunate interests.

Very respectfully yours,

JAMES A. ROBERTS,  
*Comptroller.*

## REVISED RECORD.

## SCHEDULE "A."

Showing amount raised by tax each year from 1867 to 1894 for school purposes:

Year.	Amount.
1867.....	\$1,148,422 22
1868.....	2,080,134 65
1869.....	2,207,611 42
1870.....	2,325,150 96
1871.....	2,458,751 48
1872.....	2,565,672 37
1873.....	2,610,784 31
1874.....	2,662,032 98
1875.....	2,711,634 84
1876.....	2,959,725 13
1877.....	3,082,834 09
1878.....	3,100,207 86
1879.....	2,927,326 72
1880.....	2,917,147 10
1881.....	2,862,088 12
1882.....	3,056,633 67
1883.....	3,062,050 82
1884.....	3,099,165 66
1885.....	3,180,393 90
1886.....	3,094,731 46
1887.....	3,708,384 69
1888.....	3,697,240 99
1889.....	3,469,199 95
1890.....	3,460,406 86
1891.....	3,830,999 19
1892.....	3,779,393 75
1893.....	3,931,741 50

## SCHEDULE "B."

Showing the amount of the common school fund in each of the years named and the revenue:

	Capital.	Revenue.
1846.....	\$2,133,943 01	\$123,458 12
1847.....	2,170,514 47	131,554 21
1848.....	2,211,475 14	117,220 25
1849.....	2,243,563 36	119,903 76
1850.....	2,290,673 23	135,792 10
1851.....	2,325,449 72	132,009 15
1852.....	2,354,530 09	140,295 42
1853.....	2,383,257 23	146,303 76
1854.....	2,425,211 97	144,116 97
1855.....	2,457,520 86	143,127 73
1856.....	2,491,916 14	159,849 17
1857.....	2,526,392 24	169,160 59
1858.....	2,551,260 52	159,544 28

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	Capital.	Revenue.
1859.....	\$2,586,251 16	\$164,249 77
1860.....	2,607,036 68	152,992 82
1861.....	2,625,476 94	153,010 51
1862.....	2,658,116 42	158,656 18
1863.....	2,694,552 33	157,649 42
1864.....	2,734,213 15	154,882 30
1865.....	2,765,760 77	186,462 20
1866.....	2,799,630 04	170,580 65
1867.....	2,827,465 34	183,821 84
1868.....	2,853,396 40	192,006 92
1869.....	2,880,017 01	164,143 79
1870.....	2,915,633 04	174,007 31
1871.....	2,978,576 52	175,252 96
1872.....	3,004,513 55	168,603 49
1873.....	3,029,513 55	175,191 34
1874.....	3,054,772 10	178,813 72
1875.....	3,080,107 68	179,304 66
1876.....	3,105,107 68	177,687 36
1877.....	3,130,762 78	199,151 60
1878.....	3,156,062 78	202,122 62
1879.....	3,226,285 54	188,874 95
1880.....	3,251,285 54	183,674 58
1881.....	3,276,601 54	178,465 80
1882.....	3,802,901 54	122,142 21
1883.....	3,827,901 54	147,068 54
1884.....	3,852,901 54	162,564 49
1885.....	3,880,157 39	162,626 29
1886.....	3,905,157 39	168,170 96
1887.....	3,930,157 39	187,582 65
1888.....	3,973,140 77	139,177 37
1889.....	3,998,140 77	165,848 23
1890.....	4,023,140 77	164,948 71
1891.....	4,192,640 77	168,216 75
1892.....	4,348,140 77	168,100 25
1893.....	4,373,140 77	169,288 63

## SCHEDULE "C."

Showing the rate each year in the United States deposit fund, the revenue and the losses:

	Rate.	Revenue.	Losses.
1873.....	.0641	\$257,719 91	\$2,003 00
1874.....	.0633	254,148 05	2,385 24
1875.....	.0653	262,328 27	.....
1876.....	.0624	250,864 76	8,536 69
1877.....	.0619	248,754 56	32,721 55
1878.....	.0576	229,085 63	42,598 34
1879.....	.0591	235,550 55	33,087 22
1880.....	.0616	247,601 87	27,467 33
1881.....	.0618	248,239 41	21,373

	Rate.	Revenue.	Losses.
1882.....	.0551	\$221,003 57	\$13,864 00
1883.....	.0656	263,621 18	3,288 79
1884.....	.0458	184,022 70	3,730 50
1885.....	.0483	193,946 77	10,331 50
1886.....	.0441	177,362 17	13,606 00
1887.....	.0449	180,487 04	8,607 32
1888.....	.0418	168,112 49	12,698 00
1889.....	.0533	214,161 25	12,323 03
1890.....	.0423	169,854 82	9,341 80
1891.....	.0480	172,695 71	7,595 93
1892.....	.0416	167,173 69	9,914 59
1893.....	.0329	132,066 77	8,740 00

## SCHEDULE "D."

Showing the present amount and investment of the common school fund and the income:

	Capital.	Income.
New York city 5 per cent bonds.....	\$288,200 00	\$14,410 00
New York city 6 per cent bonds.....	165,000 00	9,900 00
New York city 3 per cent bonds.....	359,909 72	10,727 29
Albany city 4 per cent bonds.....	87,000 00	3,480 00
Albany county 4 per cent bonds.....	50,000 00	2,000 00
Brooklyn city 4 per cent bonds.....	700,000 00	28,000 00
Albany county 3 1-2 per cent bonds.....	110,000 00	3,850 00
Ulster county 4 per cent bonds.....	75,000 00	3,000 00
Eric county 4 per cent bonds.....	48,000 00	1,920 00
Buffalo city 3 1-2 per cent bonds.....	200,000 00	7,000 00
Brooklyn city 4 per cent bonds.....	700,000 00	28,000 00
Gloversville city 3 1-2 per cent bonds.....	18,000 00	630 00
Village of Little Falls 3 1-8 per cent bonds....	275,000 00	8,593 75
Village of Little Falls 3 1-2 per cent bonds....	30,000 00	1,050 00
Village of Middletown 4 per cent bonds.....	26,000 00	1,040 00
Village of Salem 3 1-2 per cent bonds.....	8,000 00	280 00
Village of Mohawk 4 per cent bonds.....	8,000 00	320 00
Village of Northville 3 1-2 per cent bonds.....	32,000 00	1,120 00
Village of Clinton 3 1-2 per cent bonds.....	50,000 00	1,750 00
Village of Herkimer 3 1-2 per cent bonds.....	57,000 00	1,995 00
Village of Fort Edward 4 per cent bonds.....	97,000 00	3,880 00
Village of Glens Falls 3 1-2 per cent bonds....	142,000 00	4,970 00
Village of Stamford 3 1-2 per cent bonds.....	12,000 00	420 00
Village of Fayetteville 3 1-2 per cent bonds....	29,000 00	1,015 00
Village of Cohocton 3 1-2 per cent bonds.....	22,500 00	787 50
Village of Fairport 4 per cent bonds.....	43,000 00	1,720 00
Village of Ilion 3 1-2 per cent bonds.....	30,000 00	1,050 00
Village of Frankfort 3 1-2 per cent bonds.....	50,000 00	1,750 00
Town of Whitehall 3 1-2 per cent bonds.....	25,000 00	875 00
City of Troy 3 1-2 per cent bonds.....	65,000 00	2,275 00
City of Niagara Falls 4 per cent bonds.....	50,000 00	2,000 00

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	Capital.	Income.
Town of Wallkill, Orange county, 3 1-2 per cent bonds . . . . .	\$41,500 00	\$1,452 50
Town of Sidney, Delaware county, 3 1-2 per cent bonds . . . . .	33,000 00	1,155 00
Town of Volney, Oswego county, 3 1-2 per cent bonds . . . . .	25,000 00	875 00
Town of Otsego, Otsego county, 3 1-2 per cent bonds . . . . .	13,000 00	455 00
Town of North Hempstead, Queens county, 4 per cent bonds . . . . .	30,000 00	1,200 00
Town of Andes, Delaware county, 3 1-2 per cent bonds . . . . .	22,500 00	787 50
Town of Cherry Valley, Otsego county, 3 1-2 per cent bonds . . . . .	15,000 00	525 00
Town of Delhi, Delaware county, 3 1-2 per cent bonds . . . . .	217,000 00	7,595 00
Town of Hamden, Delaware county, 3 1-2 per cent bonds . . . . .	85,000 00	2,975 00
Union Free School, District No. 5, town of Cohocton, Steuben county, 3 1-2 per cent bonds . . . . .	4,000 00	140 00
Union Free School, District No. 5, town of De Witt, 5 per cent bonds . . . . .	6,500 00	325 00
Onondaga county 3 1-2 per cent bonds . . . . .	17,000 00	595 00
Union Free School, District No. 10, towns of White Creek, Cambridge and Jackson, Washington county, 3 1-2 per cent bonds . . . . .	22,000 00	770 00
Union Free School, District No. 1, town of Fort Edward, Washington county, 4 per cent bonds . . . . .	8,000 00	320 00
Manhattan county stock . . . . .	50,000 00	3,500 00
Bonds for lands . . . . .	70,290 66	*3,500 00
Bonds for loans . . . . .	15,670 18	.....
Mortgages . . . . .	21,885 50	.....
Cash in the treasury . . . . .	523,184 71	*13,000 00
Total . . . . .	<u>\$4,373,140 77</u>	<u>\$161,048 54</u>

\* Estimated.

## SCHEDULE "E."

Showing the amount and investment of the United States deposit fund and the income:

	Capital.	Income.
Mortgages for loans.....	\$1,420,699 19	*\$63,250 00
City of Troy 3 1-2 per cent bonds.....	50,000 00	1,750 00
City of Auburn 3 per cent bonds.....	12,000 00	360 00
City of Buffalo 3 1-2 per cent bonds.....	45,500 00	1,592 50
City of Buffalo 4 per cent bonds.....	60,000 00	2,400 00
City of Buffalo 3 per cent bonds.....	100,000 00	3,000 00
City of New York 3 per cent bonds.....	200,000 00	6,000 00
Long Island City 4 1-2 per cent bonds.....	115,000 00	5,175 00
County of Otsego 3 1-2 per cent bonds.....	25,000 00	875 00
Village of Avoca 3 1-2 per cent bonds.....	18,000 00	630 00
Village of Mohawk 4 per cent bonds.....	25,000 00	1,000 00
Village of East Aurora 4 per cent bonds.....	50,000 00	2,000 00
Village of Fredonia 3 1-2 per cent bonds.....	25,000 00	875 00
Village of Cobleskill 3 1-8 per cent bonds.....	60,000 00	1,875 00
Village of Batavia 3 per cent bonds.....	20,000 00	600 00
Village of Altamont 3 1-2 per cent bonds.....	13,580 00	475 30
Village of Herkimer 3 1-2 per cent bonds.....	25,000 00	875 00
Village of East Syracuse 4 per cent bonds.....	50,000 00	2,000 00
Village of New Rochelle 5 per cent bonds.....	95,000 00	4,750 00
Village of Whitestone 4 1-2 per cent bonds....	22,000 00	990 00
Village of Andover 5 per cent bonds.....	15,000 00	750 00
Town of New Lots, Kings county, 4 per cent bonds . . . . .	401,000 00	16,040 00
Town of Walton, Delaware county, 3 1-2 per cent bonds . . . . .	30,000 00	1,050 00
Town of Sharon, Schoharie county, 3 1-4 per cent bonds . . . . .	16,000 00	520 00
Town of Cherry Valley, Schoharie county, 3 1-4 per cent bonds.....	21,000 00	682 50
Town of Crawford, Orange county, 3 1-4 per cent bonds . . . . .	36,000 00	1,170 00
Town of Tonawanda, Erie county, 6 per cent bonds . . . . .	124,000 00	7,440 00
Union Free School District No. 1, town of Little Falls, 3 1-2 per cent bonds.....	21,000 00	735 00
Union Free School, District No. 1, town of Volney, 3 1-2 per cent bonds.....	1,500 00	52 50
Union Free School, District No. 4, Johnstown, 4 per cent bonds.....	34,500 00	1,380 00
Penn Yan Union School, District, 3 1-2 per cent bonds . . . . .	-7,000 00	245 00
Cash in the treasury.....	875,741 52	*21,893 50
	<hr/> \$4,014,520 71	<hr/> \$152,431 30

\* Estimated.

## SCHEDULE "F."

Showing the capital and investment of the college land scrip fund and the income:

	Capital.	Income.
District of Columbia 3 65-100 per cent bonds.....	\$85,000 00	\$3,102 50
New York city 5 per cent bonds.....	211,800 00	10,590 00
Buffalo city 7 per cent bonds.....	37,000 00	2,590 00
Albany county 3 1-2 per cent bonds.....	10,000 00	350 00
Albany county 5 per cent bonds.....	43,000 00	2,150 00
Cash in the treasury.....	87,609 12	*2,190 00
	<hr/> \$474,409 12	<hr/> \$20,972 50

## SCHEDULE "G."

Showing the amount and investment of the literature fund and the income:

	Capital.	Income.
District of Columbia 3 65-100 per cent bonds.....	\$25,000 00	\$912 50
New York city 3 per cent bonds.....	100,000 00	3,000 00
Watertown city 3 1-2 per cent bonds.....	15,000 00	525 00
Village of Camden 3 1-4 per cent bonds.....	40,000 00	1,300 00
Town of New Lots, Kings county, 4 per cent bonds . . . . .	96,000 00	3,840 00
Albany Insurance Co. stock.....	4,000 00	400 00
Cash in the treasury.....	4,201 30	*105 00
	<hr/> \$284,201 30	<hr/> \$10,082 50

\* Estimated.



## DOCUMENT NO. 9.

(In Response to Resolution 33, Vol. 1, Page 70.)

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### RULES.

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#### CHAPTER I.

##### POWERS AND DUTIES OF THE PRESIDENT AND VICE-PRESIDENTS.

Rule 1. The President shall take the chair each day at the hour to which the Convention shall have adjourned. He shall call to order, and, except in the absence of a quorum, shall proceed to business in the manner prescribed by these rules.

Rule 2. He shall possess the powers and perform the duties herein prescribed, viz.:

1. He shall preserve order and decorum, and, in debate, shall prevent personal reflections, and confine members to the question under discussion. When two or more members rise at the same time, he shall name the one entitled to the floor.

2. He shall decide all questions of order, subject to appeal to the Convention. On every appeal he shall have the right, in his place, to assign his reason for his decision. In case of such appeal no member shall speak more than once.

3. He shall appoint all committees, except where the Convention shall otherwise order.

4. He may substitute any member to perform the duties of the chair during the absence or inability of both Vice-Presidents, but for no longer period than two consecutive legislative days, except by special consent of the Convention.

5. When the Convention shall be ready to go into Committee of the Whole, he shall name a chairman to preside therein, subject to right of committee to elect its own chairman.

6. He shall certify the passage of all amendments by the Convention, with the date thereof.

7. He shall designate the persons who shall act as reporters for the public press, not exceeding thirty in number; but no reporter shall be admitted to the floor who is not an authorized representative of a daily paper. Such reporters, so appointed, shall be entitled to such seats as the President shall designate, and shall have the right to pass to and fro from such seats in entering or leaving the Assembly Chamber. No reporter shall appear before

any of the committees in advocacy of, or in opposition to, anything under consideration before such committees. A violation of this rule will be sufficient cause for the removal of such reporter. Removal for this cause shall be vested in the President.

8. He shall not be required to vote in ordinary proceedings, except where his vote would be decisive. In case of a tie vote the question shall be lost. He shall have general control, except as provided by rule or law, of the Assembly Chamber and of the corridors and passages in that part of the Capitol assigned to the use of the Convention. In case of any disturbance or disorderly conduct in the galleries, corridors or passages, he shall have the power to order the same to be cleared, and may cause any person guilty of such disturbance or disorderly conduct to be brought before the bar of the Convention. In all such cases the members present may take such measures as they shall deem necessary to prevent a repetition of such misconduct, either by the infliction of censure or pecuniary penalty, as they may deem best, on the parties thus offending.

9. He shall also be *ex-officio* member and chairman of the Committee on Rules.

10. In the absence of the President, or his inability to preside, his duties shall devolve upon the First Vice-President, or, if he also be absent, upon the Second Vice-President.

## CHAPTER II.

### ORDER OF BUSINESS.

Rule 3. The first business of each day's session shall be the reading of the Journal of the preceding day, and the correction of any errors that may be found to exist therein. Immediately thereafter, except on days and at times set apart for the consideration of special orders, the order of business shall be as follows:

1. Presentation of memorials. Under which head shall be included petitions, remonstrances and communications from individuals, and from public bodies.

2. Communications from the Governor and other State officers. Under this head shall be embraced also communications from public officers and from corporations, in response to calls for information.

3. Notices, motions and resolutions, to be called for by districts, numerically.

4. Propositions for constitutional amendment, by districts in numerical order.

**DOCUMENT NO. 9.**

(In Response to Resolution 33, Vol. 1, Page 70.)

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**RULES.**

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**CHAPTER I.****POWERS AND DUTIES OF THE PRESIDENT AND VICE-PRESIDENTS.**

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1. He shall preserve order and decorum, and, in debate, shall prevent personal reflections, and confine members to the question under discussion. When two or more members rise at the same time, he shall name the one entitled to the floor.

2. He shall decide all questions of order, subject to appeal to the Convention. On every appeal he shall have the right, in his place, to assign his reason for his decision. In case of such appeal no member shall speak more than once.

3. He shall appoint all committees, except where the Convention shall otherwise order.

4. He may substitute any member to perform the duties of the chair during the absence or inability of both Vice-Presidents, but for no longer period than two consecutive legislative days, except by special consent of the Convention.

5. When the Convention shall be ready to go into Committee of the Whole, he shall name a chairman to preside therein, subject to right of committee to elect its own chairman.

6. He shall certify the passage of all amendments by the Convention, with the date thereof.

7. He shall designate the persons who shall act as reporters for the public press, not exceeding thirty in number; but no reporter shall be admitted to the floor who is not an authorized representative of a daily paper. Such reporters, so appointed, shall be entitled to such seats as the President shall designate, and shall have the right to pass to and fro from such seats in entering or leaving the Assembly Chamber. No reporter shall appear before

any of the committees in advocacy of, or in opposition to, anything under consideration before such committees. A violation of this rule will be sufficient cause for the removal of such reporter. Removal for this cause shall be vested in the President.

8. He shall not be required to vote in ordinary proceedings, except where his vote would be decisive. In case of a tie vote the question shall be lost. He shall have general control, except as provided by rule or law, of the Assembly Chamber and of the corridors and passages in that part of the Capitol assigned to the use of the Convention. In case of any disturbance or disorderly conduct in the galleries, corridors or passages, he shall have the power to order the same to be cleared, and may cause any person guilty of such disturbance or disorderly conduct to be brought before the bar of the Convention. In all such cases the members present may take such measures as they shall deem necessary to prevent a repetition of such misconduct, either by the infliction of censure or pecuniary penalty, as they may deem best, on the parties thus offending.

9. He shall also be *ex-officio* member and chairman of the Committee on Rules.

10. In the absence of the President, or his inability to preside, his duties shall devolve upon the First Vice-President, or, if he also be absent, upon the Second Vice-President.

## CHAPTER II.

### ORDER OF BUSINESS.

Rule 3. The first business of each day's session shall be the reading of the Journal of the preceding day, and the correction of any errors that may be found to exist therein. Immediately thereafter, except on days and at times set apart for the consideration of special orders, the order of business shall be as follows:

1. Presentation of memorials. Under which head shall be included petitions, remonstrances and communications from individuals, and from public bodies.

2. Communications from the Governor and other State officers. Under this head shall be embraced also communications from public officers and from corporations, in response to calls for information.

3. Notices, motions and resolutions, to be called for by districts, numerically.

4. Propositions for constitutional amendment, by districts in numerical order.

5. Reports of standing committees in the order stated in rule 15.
6. Reports of select committees.
7. Third reading of proposed constitutional amendments.
8. Unfinished business of general orders.
9. Special orders.
10. General orders.

Report from Committee on Revision and Engrossment may be received under any order of business.

### CHAPTER III.

#### RIGHTS AND DUTIES OF MEMBERS.

Rule 4. Petitions, memorials, remonstrances and any other papers addressed to the Convention shall be presented by the President, or by any member in his place, read by their titles, unless otherwise ordered, and referred to the proper committee.

Rule 5. Every member presenting a paper shall indorse the same; if a petition, memorial, remonstrance or communication in answer to a call for information, with a concise statement of its subject, and his name; if a notice or resolution, with his name; if a proposition for constitutional amendment, with a statement of its title and his name; if a proposition of any other kind for the consideration of the Convention, with a statement of its subject, the proposer's name, and the reference, if any, desired. A report of a committee must be indorsed with a statement of such report, together with the name of the committee making the same, and shall be signed by the chairman.

Rule 6. Every member who shall be within the bar of the Convention, when a question is stated from the chair, shall vote thereon unless he be excused by the Convention, or unless he be directly interested in the question; nor shall the roll of absentees be more than once called. The bar of the Convention shall be deemed to include the body of the Convention chamber.

Rule 7. Any member requesting to be excused from voting may make, when his name is called, a brief statement of the reasons for making such request, not exceeding three minutes in time, and the Convention, without debate, shall decide if it will grant such request; but nothing in this rule contained shall abridge the right of any member to record his vote on any question previous to the announcement of the result.

## CHAPTER IV.

## ORDER AND DECORUM.

Rule 8. No member rising to debate, to give notice, make a motion, or present a paper of any kind, shall proceed until he shall have addressed the President, and been recognized by him as entitled to the floor. While the President is putting a question or a count is being had, no member shall speak or leave his place; and while a member is speaking no member shall entertain any private discourse or pass between him and the Chair.

Rule 9. When a motion to adjourn, or for a recess, shall be carried, no member or officer shall leave his place till the adjournment or recess shall be declared by the President.

Rule 10. No persons, except members of the Convention and the officers thereof, shall be permitted within the Secretary's desk, or the rooms set apart for the use of the Secretary, during the session of the Convention, and no member or other person shall visit or remain by the Secretary's table while the yeas and nays are being called, except officers of the Convention in the discharge of their duties.

## CHAPTER V.

## ORDER AND DEBATE.

Rule 11. No member shall speak more than once on the same question until every member desiring to speak on such question shall have spoken; nor more than twice on any question without leave of the Convention.

Rule 12. If any member, in speaking, transgress the rules of the Convention, the President shall, or any member may, call to order, in which case the member so called to order shall immediately sit down, and shall not rise unless to explain or proceed in order.

Rule 13. All questions relating to the priority of one question or subject-matter over another, under the same order of business, the postponement of any special order, or the suspension of any rule, shall be decided without debate.

Rule 14. All questions of order, as they shall occur, with the decisions thereon, shall be entered in the Journal, and at the close of the day's session a statement of all such questions and decisions shall be printed at the close of and as an appendix to the Journal.

## CHAPTER VI.

## COMMITTEES AND THEIR DUTIES.

Rule 15. The President shall appoint the following standing committees to report upon the subjects named, and such others as may be referred to them, viz.:

1. On the preamble and bill of rights, to consist of eleven members.

2. On the Legislature, its organization and the number, apportionment, election, tenure of office and compensation of its members, to consist of seventeen members.

3. On the powers and duties of the Legislature, except as to matters otherwise referred, to consist of seventeen members.

4. On the right of suffrage and the qualifications to hold office, to consist of seventeen members.

5. On the Governor and other State officers, their election or appointment, tenure of office, compensation, powers and duties, except as otherwise referred, to consist of seventeen members.

6. On the judiciary, to consist of seventeen members.

7. On the State finances, revenues, expenditures and taxation, and restrictions on the powers of the Legislature in respect thereto and to public indebtedness, to consist of seventeen members.

8. On cities, their organization, government and powers, to consist of seventeen members.

9. On canals, to consist of eleven members.

10. On railroads, transportation and electrical transmission, to consist of seventeen members.

11. On counties, towns and villages, their organization, government and powers, to consist of seventeen members.

12. On county, town and village officers, other than judicial, their election or appointment, tenure of office, compensation, powers and duties, to consist of seventeen members.

13. On State prisons and penitentiaries, and the prevention and punishment of crime, to consist of eleven members.

14. On corporations and institutions, not otherwise herein specified, to consist of seventeen members.

15. On currency, banking and insurance, to consist of eleven members.

16. On militia and military officers, to consist of seven members.

17. On education and the funds relating thereto, to consist of seventeen members.

to rise and report is not in order until each section and the title have been considered, unless the limit of time has expired.

Rule. 27. Proposed amendments and other matters shall be considered in Committee of the Whole in the following manner, viz.: They shall be first read through, if the committee so direct; otherwise they shall be read and considered by sections. When the limit of time has expired, the amendments which have been proposed and not previously acted upon shall be voted upon in their order without further debate. The proposed amendment as amended shall then be voted upon without debate, and the committee shall then rise and report in accordance with the action which it has taken.

If the committee shall have adopted any proposed amendment, the same shall be reported complete with any amendments made in committee incorporated in their proper places.

Rule 28. If at any time, when in Committee of the Whole, it be ascertained that there is no quorum, the chairman shall immediately report the fact to the President, who then takes the chair for the purpose of securing a quorum, and when that is obtained the chairman resumes his duties.

Rule 29. Should the committee not have completed the business before it rises, the chairman will report progress and ask leave to sit again. If leave be refused, the effort is to bring up the subject immediately before the Convention.

## CHAPTER IX.

### PROPOSED AMENDMENTS TO THE CONSTITUTION.

Rule 30. No proposition for amendment shall be introduced in the Convention except in one of the following modes, viz.:

1. Under the order of introduction of propositions for amendment by districts in numerical order.
2. By report of a committee.

Rule 31. The title of each proposition for amendment introduced shall state concisely its subject-matter.

Rule 32. All propositions for amendment, after their second reading, which shall be by title, shall be referred to a standing or select committee, to consider and report thereon, and shall be immediately printed and placed on the files of each member. All proposed amendments reported shall, if the report be agreed to, be committed to the Committee of the Whole and immediately printed. When a committee has reported that no amendment should be made to the provisions of the existing Constitution relat-



regulations as may conduce to economy and secure the faithful disbursement of the moneys appropriated by law.

## CHAPTER VII.

### GENERAL ORDERS AND SPECIAL ORDERS.

Rule 20. The matters referred to the Committee of the Whole Convention shall constitute the general orders, and their titles shall be recorded in a calendar kept for that purpose by the Secretary, in the order in which they shall be severally referred.

Rule 21. The business of the general orders shall be taken up in the following manner, viz.: The Secretary shall announce the title of each proposed amendment or other matter, as it shall be reached in its order; whereupon it shall be taken up on the call of any member, without the putting of the question therefor, but if not so moved, it shall lose its precedence for the day. And whenever three proposed amendments or other matters have been thus moved the Convention shall go into Committee of the Whole upon them without further order.

Rule 22. Tuesday and Thursday of each week shall be set apart especially for the consideration of the general orders; but they may be considered on any other day when reached in their order.

Rule 23. Each member shall be furnished daily with a printed list of the general orders, which shall be kept on his files by the Sergeant-at-Arms, in the same manner as other printed documents.

Rule 24. Any matter may be made a special order for any particular day, by the acceptance of the report of the Committee on Rules, or by a two-thirds vote, or by unanimous consent.

## CHAPTER VIII.

### COMMITTEE OF THE WHOLE.

Rule 25. Any matter may be committed to the Committee of the Whole upon the report of a standing or select committee, or by unanimous consent at any time. Any committee may be discharged from the further consideration of any matter referred to it, and such matter may then be referred to the Committee of the Whole, by a vote of the Convention. The same rules shall be observed in Committee of the Whole as in the Convention, so far as the same are applicable, except that the previous question shall not apply, nor the yeas and nays be taken; nor a limit be made as to the number of times of speaking.

Rule 26. A motion to "rise and report progress" shall be in order at any stage, and shall be decided without debate. A motion

to rise and report is not in order until each section and the title have been considered, unless the limit of time has expired.

Rule. 27. Proposed amendments and other matters shall be considered in Committee of the Whole in the following manner, viz.: They shall be first read through, if the committee so direct; otherwise they shall be read and considered by sections. When the limit of time has expired, the amendments which have been proposed and not previously acted upon shall be voted upon in their order without further debate. The proposed amendment as amended shall then be voted upon without debate, and the committee shall then rise and report in accordance with the action which it has taken.

If the committee shall have adopted any proposed amendment, the same shall be reported complete with any amendments made in committee incorporated in their proper places.

Rule 28. If at any time, when in Committee of the Whole, it be ascertained that there is no quorum, the chairman shall immediately report the fact to the President, who then takes the chair for the purpose of securing a quorum, and when that is obtained the chairman resumes his duties.

Rule 29. Should the committee not have completed the business before it rises, the chairman will report progress and ask leave to sit again. If leave be refused, the effort is to bring up the subject immediately before the Convention.

## CHAPTER IX.

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1. Under the order of introduction of propositions for amendment by districts in numerical order.
2. By report of a committee.

Rule 31. The title of each proposition for amendment introduced shall state concisely its subject-matter.

Rule 32. All propositions for amendment, after their second reading, which shall be by title, shall be referred to a standing or select committee, to consider and report thereon, and shall be immediately printed and placed on the files of each member. All proposed amendments reported shall, if the report be agreed to, be committed to the Committee of the Whole and immediately printed. When a committee has reported that no amendment should be made to the provisions of the existing Constitution relat-

ing to any specified subject and such report is agreed to, all propositions for amendment relating to that subject which have been referred to that committee shall be considered as rejected. All constitutional amendments proposed by a minority report from any committee shall be printed and placed on the files of the members of the Convention.

Rule 33. Proposed amendments reported by the Committee of the Whole shall be subject to debate before the question to agree with the committee in their report is put.

Rule 34. No proposed amendment shall be ordered to a third reading until it shall have been considered in Committee of the Whole.

Rule 35. No proposed amendment shall be put upon its third reading until it shall have been reported by the Committee on Revision and Engrossment as correctly revised and engrossed, unless by unanimous consent. Nor shall any proposed amendment be read the third time, unless it shall have been once printed.

Rule 36. Every proposed amendment shall receive three separate readings, previous to its final passage, and the third reading shall be on a day subsequent to that on which the proposed amendment passed in Committee of the Whole.

Rule 37. The third reading of proposed amendments shall take place in the order in which they have been ordered to a third reading, unless the Convention, by a vote of two-thirds of the members present, direct otherwise, or the proposed amendment to be read is laid on the table. And the question on the final passage of every proposed amendment shall be taken immediately after such third reading, and without debate, but the vote on the final passage of every proposed amendment, revision or addition to the Constitution shall be taken by ayes and nays, which shall be entered on the Journal.

Rule 38. In all cases where unanimous consent is asked for advancing a proposed amendment out of its order, it shall be the duty of the President to plainly announce such request in full twice.

Rule 39. On the third reading of a proposed amendment after the reading of the title and before the reading of the text, the proposed amendment shall be open one hour, if required, for debate on its merits, before the previous question shall be ordered; but no member shall speak more than five minutes or more than once; the vote, however, may be taken at any time when the debate is closed.

Rule 40. On the third reading of the proposed amendment no amendment thereto shall be in order, except to fill blanks, without unanimous consent.

Rule 41. A motion may be made during the third reading of any proposed amendment to recommit it, and such motion shall not be debatable.

Rule 42. A register shall be kept by the Secretary of all proposed amendments introduced in the Convention, in which shall be recorded, under appropriate heads, the progress of such proposed amendments from the date of their introduction to the time of their final disposition.

Rule 43. In all cases where a proposed amendment, order, motion or resolution shall be entered on the Journal, the name of the member introducing or moving the same shall also be entered on the Journal.

## CHAPTER X.

### MOTIONS AND THEIR PRECEDENCE.

Rule 44. When a question is under consideration, the following motions only shall be received; which motions shall have precedence in the order stated, viz.:

Motions, to, or for:

- |                                      |   |                                       |
|--------------------------------------|---|---------------------------------------|
| 1. Adjourn for the day.              | } | Not amendable or debatable.           |
| 2. Recess.                           |   |                                       |
| 3. Call of the Convention.           |   |                                       |
| 4. Previous question.                |   |                                       |
| 5. Lay on the table.                 |   |                                       |
| 6. Postpone indefinitely.            |   |                                       |
| 7. Postpone to a certain day.        | } | Preclude debates<br>on main question. |
| 8. Go into Committee of the Whole.   |   |                                       |
| 9. Commit to Committee of the Whole. |   |                                       |
| 10. Commit to a standing committee.  |   |                                       |
| 11. Commit to a select committee.    |   |                                       |
| 12. Amend.                           |   |                                       |

Rule 45. Every motion or resolution shall be stated by the President or read by the Secretary before debate, and again, if requested by any member, immediately before putting the question; and every motion, except those specified in subdivisions one to eleven, inclusive, of rule 44, shall be reduced to writing if the President or any member request it.

Rule 46. After a motion shall be stated by the President, it shall be deemed in the possession of the Convention, but may be withdrawn at any time before it shall be decided or amended.

Rule 47. The motion to adjourn, to take a recess, and to adjourn for a longer period than one day, shall always be in order; but the latter motion shall not preclude debate.

Rule 48. A motion to reconsider any vote must be made on the same day on which the vote proposed to be reconsidered was taken, or on the legislative day next succeeding, and by a member who voted in the majority, except to reconsider a vote on the final passage of a proposed amendment, which shall be privileged to any member. Such motion may be made under any order of business, but shall be considered only under the order of business in which the vote proposed to be reconsidered occurred. When a motion for reconsideration is decided, that decision shall not be reconsidered, and no question shall be twice reconsidered; nor shall any vote be reconsidered upon either of the following motions:

To adjourn.

To lay on the table.

To take from the table; or

For the previous question.

Rule 49. No amendment to a motion shall be received while another is pending, unless it be an amendment to the amendment and germane to the subject.

## CHAPTER XI.

### OF RESOLUTIONS.

Rule 50. The following classes of resolutions shall lie over one day for consideration, after which they may be called up, as of course, under their appropriate order of business.

1. Resolutions giving rise to debate, except such as shall relate to the disposition of business immediately before the Convention, to the business of the day on which they may be offered, or to adjournments or recesses, shall lie over one day for consideration, after which they may be called up, as of course, under their appropriate order of business.

2. Resolutions containing calls for information from any of the executive departments, from State, county or municipal officers, or from any corporate bodies, shall be referred to the appropriate committee. Such committee shall report thereon within three days.

- Rule 51. All resolutions for the printing of an extra number of documents shall be referred, as of course, to the standing committee on printing, for their report thereon before final action by the Convention.

Rule 52. All resolutions authorizing or contemplating expenditures for the purposes of the Convention shall be referred to the standing Committee on Contingent Expenses for their report thereon before final action by the Convention.

## CHAPTER XII.

### THE PREVIOUS QUESTION.

Rule 53. The "previous question" shall be put as follows: "Shall the main question now be put?" and, until it is decided, shall preclude all amendments or debate. When, on taking the previous question, the Convention shall decide that the main question shall not now be put, the main question shall be considered as still remaining under debate. The "main question" shall be on the passage of the proposed amendment to the Constitution, resolution or other matter under consideration, but when amendments thereto are pending, the question shall first be taken upon such amendments in their order, and when adopted in Committee of the Whole, and not acted on in the Convention, the question shall be taken upon such amendments in like order.

## CHAPTER XIII.

### THE CONVENTION CHAMBER AND PRIVILEGES OF ADMISSION TO THE FLOOR.

Rule 54. The following classes of persons, besides officers and members of the Convention, shall be entitled to admission to the floor of the Convention during the session thereof, viz.:

1. Governor, Lieutenant-Governor, and ex-Governors of the State.
2. Judges of the Court of Appeals and of the Supreme Court.
3. The members of the Senate and Assembly, and ex-Speakers.
4. The State officers, deputies and commissioners.
5. The Regents of the University.
6. United States Senators and Congressmen.
7. The Capitol Commissioners.
8. Persons in the exercise of an official duty directly connected with the business of the Convention.
9. The reporters for the press, as provided by subdivision 7 of rule 2.

No other person shall be admitted to the floor during the session, except upon the permission of the President or by vote of the Convention; and persons so admitted shall be allowed to occupy places only in the seats in the rear of the Assembly

Chamber. All permits granted by the President may be revoked by him at pleasure, or upon the order of the Convention. No person shall be entitled to the privileges of the floor of the Convention as a legislative reporter of a newspaper who is interested in pending or contemplated constitutional revision, or who is employed by, or receives compensation from, any corporation, except a newspaper, news or press association. The doors of the Convention shall be kept open to the public during all its sessions.

## CHAPTER XIV.

### GENERAL RULES.

Rule 55. Equivalent motions, resolutions or amendments thereto shall not be entertained. If any question contains several distinct propositions, it shall be divided by the Chair at the request of any member, but a motion to "strike out and insert" shall be indivisible.

Rule 56. All proposed action touching the rules and orders of business shall be referred as, of course, to the Committee on Rules; such committee may sit during the session of the Convention without special leave, and report at any time on rules or order of business so referred to them. It will be in order to call up for consideration at any time a report from the Committee on Rules. Any member may object to its consideration until the next legislative day, and if sustained by twenty-four other members, the consideration shall be so postponed, but only once. Pending the final consideration thereof, but one motion, except by unanimous consent, that the Convention adjourn, may be entertained, and no other dilatory motion shall be entertained until such report is fully disposed of. A motion to suspend the rules shall in all cases state specifically the object of the suspension, and every case of suspension of a rule under such notice and motion shall be held to apply only to the object specified therein. Provided that when ordered so to do by the Convention a standing committee shall make a report on a constitutional amendment or other subject, the Committee on Rules shall report a rule limiting the time for debate; and upon such report no member shall speak more than once nor more than five minutes. Such report shall stand as the time limited for debate on the subject-matter referred to in such rule, and the previous question or other motion to close debate shall not be in order until the expiration of the time so allotted, or the debate has been closed; the time thus allotted for debate shall be equally divided between those in favor and those opposed to the subject-matter under consideration. All questions or

motions authorized by this rule shall be decided at once without delay or debate except as herein expressly allowed.

Rule 57. The yeas and nays may be taken on any question whenever so required by any fifteen members (unless a division by yeas and nays be already pending), and when so taken shall be entered on the Journal.

Rule 58. When the Convention shall be equally divided on any question, including the President's vote, the question shall be deemed to be lost.

Rule 59. In considering the report of the Committee on Revision and Engrossment, each article shall be open to amendment germane to such changes as may have been reported by the committee, without previous notice, but no one shall speak more than five minutes, or more than once, on any proposition to amend.

Rule 60. When a blank is to be filled and different sums or times shall be proposed, the question shall be first taken on the highest sum and the longest time.

Rule 61. A majority of the Convention shall constitute a quorum. In all cases of the absence of members during its sessions, the members present may take such measures as they shall deem necessary to secure the presence of absentees, and may inflict such censure or pecuniary penalty as they may deem just on those who, on being called on for that purpose, shall not render sufficient excuse for their absence. No constitutional amendment shall be adopted unless by the assent of a majority of all the members elected to the Convention.

Rule 62. For the purpose of securing the attendance of members, a call of the Convention may be made, but such call shall not be in order after the main question has been ordered, nor after the voting on any question has commenced, nor after the third reading of an amendment has been completed.

Rule 63. When less than a quorum vote on any subject under consideration by the Convention, it shall be in order, on motion, to close the bar of the Convention, whereupon the roll of members shall be called by the Secretary, and if it is ascertained that a quorum is present, either by answering to their names or by their presence in the Convention, the yeas and nays shall again be ordered by the President, and if any member present refuses to vote, such refusal shall be deemed a contempt, and member or members so offending shall be cited before the Committee on Privileges and Elections, which, after inquiring, shall report to the Convention for such action as the facts shall seem to warrant, and unless purged, the Convention may order the Sergeant-at-Arms to



remove said member or members without the bar of the Convention, and all privileges of membership shall be refused the person or persons so offending until the contempt be duly purged.

Rule 64. Whenever any person shall be brought before the bar of the Convention for adjudged breach of its privileges, no debate shall be in order, but the President shall proceed to execute the judgment of the Convention without delay or debate.

Rule 65. It shall be the duty of the Secretary to keep the journal of each day's proceedings, which shall be printed and laid on the table of members on the morning after its approval. In addition to his other duties he shall prepare and supervise the printing of the calendars of the orders of the day and cause them to be placed on the files before the beginning of each day's session. All appointments of officers and employes shall be entered on the Journal of the Convention, with the date of appointment.

Rule 66. It shall be the duty of the stenographer of the Convention to be present at every session of the Convention. He shall take stenographic notes of the debates in the Convention and in Committee of the Whole, and shall at each day's session of the Convention furnish a copy of the debates of the day before written out in long-hand, and file the same with the Secretary, who shall keep the same in his office, and the same shall at all times be open to the inspection of delegates.

Rule 67. At a reasonable time, to be determined by the Convention, and at least five days before final adjournment, the Committee on Revision and Engrossment shall be instructed to accurately enroll and engross the present State Constitution, with all amendments thereto properly inserted, or the proposed new Constitution; and the same shall be reported by said committee to the Convention, read through therein, and submitted to a final vote prior to its final adjournment. When an article of the Constitution is amended, or a new article substituted or added, such amended article, or new article, shall be enrolled and engrossed entire in its proper place in the Constitution.

## CHAPTER XV.

### MISCELLANEOUS PROVISIONS.

Rule 68. The Sergeant-at-Arms shall, under the direction of the Committee on Printing, receive from the printer all matter printed for the use of the Convention, and keep a record of the time of the reception of each document, and the number of copies received, and cause a copy of each to be placed on the desk of each member immediately after their reception by him. Subject

to the direction of the President, he shall enforce the rules of the Convention.

Rule 69. Separate files of the daily Journal, reports of committees and of all documents ordered to be printed shall be prepared and kept by the Sergeant-at-Arms, and one copy shall be placed upon the desk of each member of the Convention and of the Secretary.

Rule 70. There shall be printed, as of course, and without any special order, 1,000 copies of the Journal and of all reports of committees on the subject of constitutional revision.

Rule 71. Six hundred copies of the Journal and six hundred copies of the reports as printed shall be bound and distributed as follows, viz.: To each member of the Convention, two copies; State library, five copies; the library of the Senate, five copies; the library of the Assembly, five copies; the office of each county clerk, one copy; and the remaining copies to such libraries and other institutions as shall be designated by the President or by the Convention.

Rule 72. The officers of the Convention appointed by the President shall perform such duties as he may prescribe, and for any breach of duty any such officer may be removed and his successor appointed by the President. The officers of the Convention appointed by the Secretary shall perform such duties as he may prescribe, and for any breach of duty any such officers may be removed and his successor be appointed by the Secretary.

**DOCUMENT NO. 10.**

(In Response to Resolution No. 47, Vol. 1, Page 273.)

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**ARGUMENT OF COUNSEL IN THIRTIETH SENATE DISTRICT CONTEST.**

In the Matter of the Petition of Thomas A. Sullivan and Harvey W. Putnam, Claiming the Seats now Occupied by Herman F. Trapper and Charles Beckwith in the Constitutional Convention.

The committee met at the committee rooms at the capitol at 2.30 P. M.

Chairman Hirschberg called the committee to order and directed the Clerk to call the roll.

The following members were found to be present: Chairman Hirschberg, Messrs. Cookinham, Chipp, Deady, Durfee and Lincoln.

Chairman Hirschberg — Mr. Lester, Mr. Crosby and Mr. Gibney are engaged in taking testimony. This meeting was called for the purpose of hearing arguments in the Buffalo contest. We will take the appearances of counsel.

Mr. Sewart A. Simons appeared for both contestants.

Mr. William E. Delaney appeared for Judge Beckwith.

Chairman Hirschberg — There is no appearance on behalf of the other sitting member?

Mr. Delaney — I believe not.

Mr. Cookinham — Mr. Chairman, would it be advisable to have a division of time agreed upon before we begin the arguments. I do not know whether counsel have made any arrangement between themselves.

Chairman Hirschberg — I suppose the contestant would briefly outline the nature of the charge of accusation upon which he contests the right of the sitting member, and that the sitting member's counsel would then argue the merits, to which the counsel for the contestants would reply. As to the division of time, that is under the control of the committee.

Mr. Deady — Hadn't we better have an expression of opinion from counsel as to how much time they think they would require?

The contestant, first. How much time do you think you would require, Mr. Simons?

Mr. Simons — I would prefer to state very concisely and accurately the points upon which I rely and then have not to exceed fifteen or twenty minutes reserved at the close of Mr. Delaney's remarks. I never have heard the arguments presented on the other side and I would like an opportunity to reply briefly. I think I may take half an hour and present my case fully if I may then have an opportunity to reply to Mr. Delaney.

Mr. Dedy — Well, I guess the chairman will give you an opportunity.

Mr. Simons — Shall I proceed?

Chairman Hirschberg — Yes, and we will rely very largely on your own forbearance.

Mr. Simons — If the committee please, the contest in this district which is composed of fourteen wards, running from one to fourteen, in the city of Buffalo, and the Nineteenth and Twentieth, which are two wards lying on the westerly side of Main street, as contrasted with the other fourteen, has been narrowed by the contestants so as to embrace a few districts only. The evidence which was produced before the sub-committee had to deal only with the second, third and fourth districts of the First Ward, and the fifteenth district of the Nineteenth Ward. The claim of the contestants in brief is, and for the purpose of this argument I shall ask your brief attention to one district only, the contention is that this district being the fourth district of the First Ward had, in fact, no election upon election day last year. That as a matter of fact the return which was made of votes in that district was in no sense indicative of any result which had been reached by the electors of that district, but that the entire vote was polled through a scheme of fraud, intimidation and violence which absolutely vitiated the return; that the whole conduct of every one connected with this election upon the part of the prevailing side shows that the district itself cannot be counted as a valid factor in determining who was elected to this Convention.

Mr. Putnam is twenty-three votes behind Mr. Trapper and twenty-six behind Mr. Beckwith. Mr. Sullivan is something over a hundred behind both of these gentlemen. This fourth district of the First Ward is a district lying at the foot of Main street, bounded by the river, substantially, and Main street, and by its character, as shown by all the evidence, it is a district that is

not increasing in population, but rather decreasing, manufactories advancing and shutting out the resident portion until it has substantially become a district of cheap tenements and houses which have been abandoned to saloons and works like light manufacturing, and most of the blocks have gone into larger manufactories like boiler works. This district, in 1891, the same district exactly, gave a Republican vote of 140 and a Democratic vote of 169. In the year 1892 it cast a total of 342, that being presidential year. In 1893, last year, it cast a total vote of 641, or nearly twice the vote which it cast the year before. It cast less Republican votes than it cast in 1892 by fourteen. It cast or was returned as having cast nearly three hundred more Democratic votes than it ever cast before, or at least than it cast in 1892. The total vote in that district was 505, or nearly 150 more than the entire vote of the district upon the preceding year. It was claimed on the Assembly hearing, and may be claimed here, that the fifth district of the Nineteenth Ward, which lies directly across the street, and from which the colonizers, of whom I shall speak hereafter, are said to have come, that this district had sent, or that men from this district had come into the fourth district of the First Ward and cast their votes, and that they were entitled to be counted somewhere; but an examination of this fifth district of the Nineteenth Ward, by comparison with the large vote of the presidential year, showed that that precinct also increased in its vote, thus establishing the fact that the vote did not come from that district, or if it did that a double crime was committed. We start out then with this situation of affairs. If the committee examine this return from the beginning, without knowing anything of the facts, they will find a vote in 1891, 140 Republican to 169 Democratic, or a Democratic majority of twenty-nine. The following, presidential year, a Democratic majority of 111, followed up at the election last fall by a Democratic majority of 379, or more votes than were ever cast in the district, including the entire vote of both parties. The query then presents itself: What is the cause of this? How can we account for it? And we proceed to an examination of what the evidence discloses.

It now turns out that from a number of places in this district, notably 133 Main street, 33 Exchange street, 165 Washington street, 85 Main street and 19 Main street, that large numbers of men were registered. There were registered from 133 Main street 129 men as it appears from the testimony. This house had formerly been a saloon. In the month of October, and about the first

of the month, Henry Kilcourse, a man who keeps a saloon on Canal street in the Nineteenth Ward, rented this place, or obtained an assignment of the lease. He paid the rent for the months of October and November, and then abandoned the place or vacated it, and the owners were unable to get their rent. The evidence shows that immediately after election this horde of people disappeared. One hundred and twenty-nine men were registered from that place.

I now, in order to save time and passing this point, desire to cover one other branch of this subject. It is this, that this matter was carried on in the eyes of the officers of the law, or the assumed officers of the law, without interference, but was submitted to by them, and, in fact, encouraged; and I point to one significant proof of it in reference to this 133 Main street. The day before election, warrants for these men, upon the ground of illegal registration and illegal conduct, were sworn out. They were placed in the hands of Captain Regan, the captain of this precinct. He had been classed as a Republican, but it turns out that, at this election, by his own evidence, he had become a convert to the candidacy of Sheehan, who was the Democratic candidate for alderman in that district, and was one of his active supporters. Captain Regan turns these warrants over to a man by the name of O'Donnell, a man who is not now on the force. O'Donnell takes these 129 warrants and makes an attempt to find the men. He goes to this place, 133 Main street, and is unable to find them. He goes there again at eight or nine o'clock; he goes there again at midnight; he is still unable to find them. He goes there again at nine o'clock on the following morning; he is unable to find anybody. He goes there again at noon and is unable to find anybody. Not a single arrest is made of these men, on account of the inability of the officer to find them, or "that they were bums," as he says, "without father and mother," and he could not tell anything about them. This man, unaided and alone, goes through this form, and, on election day, sixty-five of these men, men bearing those names, from that single place alone, cast their votes. O'Donnell did not go with his warrants to the polls to arrest them, but, three or four days afterwards, he arrests four of the men, one or two of whom it turns out he personally knew all the while. Those men were Stone and Jennings, who kept a saloon on Canal street next to Kilcourse. The place at No. 33 Exchange street, from which a large number registered and cast their votes, was shown by the testimony before the committee to have absolutely been closed and vacated on election day

and the day before; so that at the time when the polls opened on the morning there was not a single resident of that place in existence. They had gone, no one knows where; and yet their votes were cast on election day. So on, throughout the list, of these colonized places, we find a similar state of facts. It is very readily seen how this vote could mount up to these fearful figures when such a system of voting men as this system disclosed was carried on. The poll list and the registry list is introduced in evidence, and is annexed to the minutes. An examination of it will show that 200 men, substantially, voted from these colonized districts, that we were able to identify as the colonized places and the suspected colonized places. Then, let me turn for one moment to another feature as bearing upon the conduct of the law. It now turns out from the uncontradicted evidence produced by Mr. Delaney himself, that Charles McDonough, assistant superintendent of public works; John I. Lynch, an inspector upon the canals; Henry Kilcourse, a saloon keeper on Canal street, and James Kennedy, a life-long resident of the Nineteenth Ward, themselves, organized as a band, or a body, or a council, to control this district. James Kennedy, a man of great personal force, is, in my judgment, the man alone who cast the vote of this district, absolutely. The poll remained in his absolute power from the time it opened, even before it opened, until it was closed; and the evidence of it. Lynch lived in the Second Ward with his mother. For the purpose of lending color to his scheme, he moved over a few days before registration, into the First Ward, and immediately moved back again and dwelt with his mother at home. He is made a deputy sheriff, under the following circumstances: He goes to the sheriff of the county of Erie, after a consultation with McDonough, Kennedy and Kilcourse, and says: "We want deputy sheriffs on election day." The result is that 112 men were sworn in without a single inquiry being made by the man who swore them in as to who they were, or as to their qualifications, and I will produce the stenographer's minutes to substantiate every word I utter. These men were sworn in, forty of them, at McDonough's office; forty-nine or more were sworn in at the elevator across the creek, before Kennedy, and nineteen more at Connor's saloon, on Ohio street; 112 deputy sheriffs in all were sworn in. Who are these deputy sheriffs? What are they? We find among the list four pronounced pugilists and prize-fighters, one of them registering from Kennedy's saloon on Main street, one from 33 Exchange street, one from 133 Main. These men were brought in for the purpose of controlling this poll, and

Lynch testifies upon his examination that he and McDonough said that they were to look out for men who could handle themselves. McDonough, when a witness for the contestee, upon the cross-examination is asked: "What were these men for? Did you pay them anything?" "Well, of course; they were workers at the polls. They were appointed for the purpose of being workers at the polls, to peddle the ticket and work the election on election day." It is the sworn evidence of the contestee that this was the sole object of appointing these men, together with these pugilists, one of whom was sworn. It turns out, as far as we are able to discover from any evidence, and the only evidence in the case, that twenty-five dollars was the price that Kennedy arranged to pay, and that he personally paid one of these prize-fighters to go down there and take charge and hold that poll upon election day. There is no dispute about these facts.

We proceed. This polling booth is situated in an unpaved street, on the easterly side of the street. A photograph of it was introduced before the committee, and I have a copy of it in my hand. I don't know where the original one is, but this is an exact copy, and Mr. Delaney will recognize it as cut out of the same paper. The door of this booth opened out on the side towards Perry street, and towards the north. On the morning of election day, at an early hour, a line of Republicans organized and stretched along in the direction of Perry street. This booth is located 150 feet from Perry street. The board fence and the door can be seen in the photograph. These men were in an orderly line arranged there for that purpose. It was contended by the police, and the theory was got up, that these men were grouped about the door; but I turn to the evidence of the contestee's witnesses, that of Mr. Lynch himself, and of Mr. Myron Woods, of whom I shall speak hereafter. He testifies that they stood there in an orderly line, in single file, without making any trouble. They arrived there early in the morning. For what purpose? Because there was a registration of 899 voters from that district, and every man knew it was impossible to cast this vote in that time without some practice being resorted to which was not within the Election Law. They went there in the morning in an orderly way to cast their vote. A large number of them were Italians, and they were Republicans, and no charge of colonization was ever made against them. They had been residents of the ward for a long period of time. They went there to the polls in the morning, and what is the next thing that ensued? At daylight, the first thing that was known is, James



Kennedy, from the Nineteenth Ward, comes there and knocks at the polling booth, and the cry is, "Who is there?" "I." He is admitted, and he comes out and says, "Don't open this polling booth till I say so," and he disappeared behind the polling booth. A few minutes afterwards Regan appears at the head of a squad of eighteen policemen, and Kennedy and Lynch at the head of the thugs and prize-fighters and deputy sheriffs march in from around behind this polling booth and there is a scuffle, and they throw these men out of line. They are dispersed, and these men take possession, and in a moment the stream of voters rushes into the polling place in squads, in troops, headed by these men with the deputy sheriffs' badges on. At the door of this polling booth is stationed prize-fighter Baker and a prize-fighter from New York, named Farrell. Inside are Marks and Strauss, two other prize-fighters. Kennedy stands in the center of the booth in a situation to control the entire attitude, with Kilcourse back of him. These are uncontradicted facts, gentlemen. The men come in to vote, and I have the polling list here. They come in in troops. If one man comes in from 133 Main street, the next man who votes is from 133 Main street. If he comes in from 33 Exchange street he comes with his friend from 33 Exchange street. They are brought in by these deputy sheriffs. Kennedy stands there throughout the day, saying: "More voters. Send in more voters." Kilcourse echoes it, and the line of deputy sheriffs carries these men in groups and throws them in. And what goes on inside? The voting is done, and it is substantially uncontradicted that it is done from the first two compartments. What happens there? Throughout the entire day two men are stationed in the first two compartments, one in each compartment, to fold the tickets and give them to the voters. The voting is done by those two men. One of them is Sullivan, a bartender in Kennedy's saloon, and the other a fellow named Cook, a minor. Kennedy stands there and personally directs men into these polling booths, and they come out from there with a ticket prepared to hand to the ballot clerk to be deposited in the box. All this is within the hearing and under the control of Kennedy, who was as completely a master of it as I am of my own household or stable, and more so.

Now, gentlemen of the committee, this farce goes on, and who is there to take notice of it? I ask your particular attention to this point. The Republican watchers present themselves at the polls in the morning. They are well-known citizens. They seek entrance to this polling place and entrance is denied. Let us see what the pretense is on which it is denied. James O'Connell

organized this poll as the chairman of the board. He is taken ill and goes out. After he leaves, a man who is not elected or sworn in assumes his place as chairman of the board. These watchers fight their way to the door. They ask for police assistance and it is denied them. The cry goes out to them, "You must see the chairman." The chairman is outside and cannot be found. Once during the day O'Connell is found and then he says: "Bowe is inside acting as chairman." They go to Captain Regan and appeal to him to put them in the polling booths where they could observe this crime, where they could detect it as it was going on and obtain the evidence. He refused to do anything for them and at last they go to the police headquarters, to the superintendent of police and are finally put inside the booth.

Wallace Thayer had got in early and had remained. He was a watcher from the Home Rule Democracy and he had early got into this place. Mr. Robert C. Chapin, a stenographer, a partner of the gentleman who was elected official stenographer of the Convention. Mr. Wallace Thayer, to whom I have referred, a lawyer of Buffalo, and a man of the highest reputation, and Mr. John Martin, an old life-long citizen of Buffalo, were legitimately at the polls. Well, they at last got in. Mr. Chapin and Mr. Thayer take minutes of what goes on inside this polling booth, an absolute transcript of what took place. The testimony is absolutely uncontradicted that this method of voting went on in this polling booth, one man after another all day long, two or three in the booth at a time, these men preparing the tickets and handing them out. I challenge Mr. Delaney, or anybody to say, that there is any substantial evidence on the part of anybody who is entitled to hold up his head anywhere, which contradicts it. The two men inside as officers of the booth for the Republican party, are two young men who appeared before this committee, and I was proud of them as witnesses. They are men holding official positions of trust in Buffalo to-day. Absolutely fearless and dauntless and honest. Mr. Aeschback keeps a memorandum throughout the day of what took place in the polling booth. I have cited his evidence in the brief which I have prepared. I have cited it with some care, because it is given with great candor all the way through. He describes the prize-fighters at the door and describes these assaults upon the voters. Now, who are allowed to go into this polling place? The men that are known to the door-keepers or to Kennedy, and nobody else during the time this mass of voting was being done. They have introduced the evidence of a man who says he went to the polls and

voted without the slightest molestation. I was struck by the evidence. It turns out on cross-examination that he himself was a Democratic ticket peddler, and a well-known politician, and of course when he got into line he was admitted without any trouble. They introduce the evidence of another man, whose number, I think, is 568, who voted in the afternoon. These men who were driven from the polls, some of them went home disheartened and others got into line, and they say for an hour, worked their way to the polling booth door and there when they are recognized they are seized by the deputy sheriffs, struck by the prize-fighters, thrown from the line, driven back, and set out. "Get out of here," they are told, at the same time streams of men are brought forward under the lead of the deputy sheriffs and Kilcourse, taken into the booth and jammed into these compartments and made to do this voting. And this is all substantially denied. It is unnecessary for me, gentlemen of the committee, to go through in detail with what happened outside this booth, but I simply want to say that we present the uncontradicted evidence of reputable citizens who were assaulted and beaten, and some of whom went away and never came back. Of others who did come back to the polls, two well-known Italian citizens were taken and led into the booth at the head of the line. They were put in there and told by Kennedy they must vote this ticket. They are given the ticket by this ticket folder, and they put it into the ballot-box and voted for a man they never wanted to vote for. This is a sample of what took place throughout the day. It is substantially uncontradicted by the parties who had knowledge of what took place. The evidence which was given in behalf of the contestees when considered by a body of lawyers, and I say this with great earnestness, will be easily sifted. This was the method of examination. They produce a patrolman, or somebody else who was there, ninety per cent of their witnesses being patrolmen, and they are scattered around at different hours of the day and cannot be identified with particular accuracy at any particular point, or at any particular time. The witnesses are asked this question, "Was not this election as quiet an election as you ever say in the First Ward?" And they say, "As far as any disturbance or fighting was concerned I should say it was." "Did you see anybody who was put into the compartment to vote?" "No; I did not see anybody." That is the style of their evidence, and the stenographer's minutes are here, and if this is challenged by Mr. Delaney or anybody else I will take any time which the committee will allow me and

read it, page after page, exactly to that same effect. I have read it with great care, and I cite the minutes in my brief to bear me out in my remark. Wallace Thayer got into this polling place. He is a keen man, a lawyer of courage. He goes on and tells of Kennedy's domination there at the polls, handling these men, these prize-fighters assaulting anybody he wanted to keep from the polling booth, and at last Kennedy says, "What are you doing here? Dog-catcher O'Shea put him out." And O'Shea takes Thayer, and Thayer leaves the polling booth, and the polling booth is empty so far as anybody in the interests of law and order are concerned, who might observe what is going on. Absolutely. But Thayer is a man who will not have his rights trampled upon. He is a man of conscience. He goes immediately to the judge, and swears out a warrant. The sheriff is called and told to go out and take Mr. Kennedy. The warrant says, take him forthwith. This is about noon. It may be that the judge had no right to give such a direction, but it was the duty of the officer to execute the process under his direction because it is a process to be executed forthwith. The sheriff goes to the office of Tabor, Sheehan, Cunneen & Coatsworth, for the purpose of finding his deputy, and then loses himself for four hours and a half, while this carnival goes on down there with Kennedy in absolute supreme control. The sheriff appears a few minutes before the polls close and asks for Kennedy. Kennedy is out. The sheriff leaves and Kennedy again returns and the poll of this district winds up with eight or nine men running at the last instant from 133 Main street, 85 Main street and the list winds up as follows: "133 Main, 133 Main, 133 Main, 133 Main, 133 Main, 85 Main, and 165 Washington." This sheriff, who has now been removed for his conduct upon election day, and into that matter I shall not enter at all, but simply to say that this man by his conduct, appointing 112 deputy sheriffs there at the polls, approved this action which was of the most fraudulent kind, that this man could have stopped this in one moment if he had seen fit, by taking Kennedy out of that polling booth. Kennedy stood there, and it needs no actor, Mr. Chairman, to represent to this committee what took place. Here stands Kennedy with these men, policemen, deputy sheriffs, pugilists, under his control. Kennedy the master mind, voting these men from these two compartments, rushing them in from the outside through the deputy sheriffs, ejecting the watchers from the polls, and standing there as the master of this whole business. Why, is that an election within

the meaning of the statute, which says that we shall have a full, a fair and free election upon election day?

I have outlined in a way what took place, but we get very specific statements in this evidence as to these outrages. We have produced men of unquestioned character who swear to these assaults, to these acts of violence, to this fraudulent voting. I say, and I say that it is enough to vitiate this whole business, that these deputy sheriffs were appointed and put in charge there for the very purpose of being workers at the polls, and for the purpose of casting this fraudulent vote.

That was enough. But when we show that the majority of the vote was cast by these two men in these two first compartments, under the direction of Kennedy, by a ballot folded for that purpose, which is undenied, I say, that that itself is another element which clinches the fraud. I say further that the violence which prohibited the Republicans from coming to the polls and voting, as they were lined in an orderly line in the morning, driven away and scattered, is a further evidence of it. Still further, I say that these prize-fighters rushed in and permitted to vote over two hundred colonizers in this one district, making a vote of 505, when the highest Democratic vote ever cast, at least the highest as shown before the committee, was 212. Now, this is called a conspiracy. I don't care whether it is conspiracy or not. I say a police department that would go down there at the dictation of a man and sweep away this line which had been formed, and permit these assaults to be made by those deputy sheriffs, and stand there all day long while those scenes were being enacted, the fact being also that these 129 warrants had been taken and not a man found, or attempted to be found, when they were there voting at the polls, that that is evidence which to a candid man's mind shows sympathy on the part of the police department. I say the appointment of 112 deputies, prize-fighters and pugilists, and thugs and bums from other places to go down there as political workers on election day, and the failure to arrest a man after the warrants were issued and put into the hands of the officer, is evidence to any candid man's mind that the sheriff's office was not instrumental or desirous of stopping this fraud. I do not think it is necessary for this committee to go into the detail of the conspiracy. I say that the evidence is uncontradicted, established beyond peradventure, that the entire vote of this district was a fraudulent vote; that the vote was cast and voted as these men wanted it to be.

Mr. Chipp — You do not mean, Mr. Simons, that the entire vote of this district was fraudulent. Part of the vote was valid, was it not?

Mr. Simons — No; I say the poll, the entire poll. I say that no man can say from the evidence that the election was polled in a legal manner, in the manner recognized by law.

Mr. Deady — Do you claim that the irregularities or frauds, as you would call them, in that district, would vitiate the entire poll?

Mr. Simons — In that one district.

Mr. Deady — Will you kindly tell us the number of votes cast in that district for the contestant and for the contestee, and what the majority of the contestee in the district was.

Mr. Simons — I will. This was a straight ticket. Everything was straight down in that district. Five hundred and five Democratic tickets were counted and 126 Republican.

Mr. Deady — How was it outside of that district?

Mr. Simons — Outside of that district the Republican contestants had a majority of about 200. The figures exactly are, that with that district, one contestant received within twenty-three votes and the other a hundred and something. There was a Democratic majority of 379 returned in that district. By throwing out that district it elects Mr. Putnam by about 350 and Mr. Sullivan by over 150.

Mr. Lincoln — That is, rejecting this district entirely.

Mr. Simons — Rejecting this district entirely.

Chairman Hirschberg — What became of the line of Republican voters that you claim were there at the opening of the polls?

Mr. Simons — They were scattered to the four winds.

Chairman Hirschberg — Did they vote?

Mr. Simons — I am going to speak of that. Some of them went away from the polls and never came back, and notably, the evidence we can give on that subject is the best judgment of the men who were there and who knew. We produce one man who was assaulted and struck, and who went home and could not come back — William Annis. We produce four men who got into the line and got to the poll and were assaulted. One man was struck in the lip and thrown in the mud. Several men were severely treated and driven away from the polls; two men were taken charge of by James Naples and taken into the booth and by Kennedy put into the two compartments, and they voted the

Democratic ticket. Now, we were unable at that time to get the names of absolutely every man who was in this line, but we described them with as much accuracy as possible under the laws of evidence, and we produce the evidence of reputable people as to these cases.

Now, I ask you to consider one thing more in connection with this matter and I shall close, in order that I may be able to meet some of the suggestions which may be made by Mr. Delaney. Who knows, as matter of personal knowledge, what took place that day down there apart from the men we produce? We produced every man who was there in our interest, or in the interest of the Cleveland Democracy. Everybody except these men who were charged with being the active conspirators, who made this thing possible, and who came over there from the Nineteenth Ward for that purpose? Who knows about? James Kennedy is the man who knew the whole thing. He was there every moment from the time the polls opened after he led up his gang of thugs. It is undenied. It is sworn to by the contestee's witness himself, and I will produce his evidence. As a paid worker, he was there every moment until the polls closed, voting these men. Is James Kennedy sworn? We did not hear anything of him. Has he ever sworn, so that they could read his evidence? Never. Who is the man who knows more about it than anybody else next to Kennedy? Harry Kilcourse, the saloon-keeper on Canal street, who organized the colonizers at 133 Main street, who rented the house and cleared out after election. Was he sworn, the man who stood there and pitched these miserable men into the polling booth? He never appeared. Was he ever sworn? He was not. Were the Democratic officers of the polls sworn? Yes. They swear the chairman of the board, James O'Connell, who was taken sick the moment the polls organized, and left, and who was conveniently away. They swear one other man, an officer, but nobody else; none of the other ballot clerks or poll clerks. They swear Myron Woods, who testified that he lived in the Fifth Ward; that he came over there on the twentieth of October to get a residence, and then he finds that it makes him an illegal voter and he puts it the previous month. He came over there for what purpose? For the purpose of being appointed a ballot clerk in that very polling booth. He says it was a little private business of his own. He is brought over a few days before election to be made poll clerk in that polling booth, and the day after election he moves back again. What does he swear? He swears that he went to the polls; that there was this Republican line in order.

This is the testimony of this very man whom they produce. He says it was an orderly Republican line, and he makes a few weak denials of what took place. Now, who else ought to be sworn? Baker, this pugilist. He was convicted of an assault upon a Republican watcher and sent to the penitentiary. Strauss ought to be sworn. He was; and he gave the whole scheme dead away. He was the prize-fighter, who went up and registered from 33 Exchange street, that Kennedy got to come down there with these other prize-fighters in some mysterious way, and he says they went into a room and were told to hold up their hands, and were sworn. He didn't know what it meant, but he knew Jim Kennedy knew, he says, and Jim Kennedy knew what he was to do, to work for the Democratic ticket and have things all right at the polls. He calls around, at Kennedy's invitation, and gets his twenty-five dollars, and is told to appear in line. He goes there the next day and is marched from this saloon down to this polling booth where this assault is made, and he says, when he saw the fight, that he had better keep out of it. Baker, Farrell, Markes, they are the men who know all about this thing, and also these officers, and they are not sworn. It is an absolute judgment by confession. The evidence which is introduced is the evidence of policemen, who were infrequently located, and who were, at the time they gave their evidence, under a sword suspended over their heads. They simply testify to the fact that it was as quiet an election, that they did not see anybody put in the polling booth, and a few general things of that nature.

Gentlemen of the committee, I submit with great earnestness that it is impossible to present to anybody clearer evidence than has been elaborated by these contestants in these proceedings to show a fraudulent election. We will give them any vote they ever polled in this district any time, and it elects these contestants away beyond any necessary figures. Alderman White was running in that ward. He had been running for eight consecutive terms, sixteen years. The time he ran before, this polling place gave twenty-nine Democratic majority, as shown by the minutes. This time it gave 379. I believe, and I believe that the counsel on the other side believes, that if there had been nothing done, if the citizens had gone to the polls without any known story from inside or out as to what was to take place, that that district would have given either a Republican majority or a Democratic majority not to exceed fifty, and I think that that is the sentiment of every man familiar with this matter.



Chairman Hirschberg — Do you mean to assert that the sheriff appointed 112 deputies for that one polling place?

Mr. Simons — They were used at that polling place and at one other. I desire to say in regard to that other polling place that exactly the same thing took place. W. J. Connors, after the Republicans had gone to the polls, formed a line, and this is uncontradicted. The contestee produces no evidence against it.

Mr. Delaney — Sergeant Baumet.

Mr. Simons — He is the only man, I think; but we produce reputable witnesses who swear to the same thing, that in that district the same thing took place. That these assaults occurred and these men were put into the compartments and did this voting, Connors sometimes in the compartments and sometimes not. In that district, if it were necessary, the contestants have an absolute claim under the Hasbrook case in the 135 New York, because Dalton, the Democratic inspector, took the ballots and folded them over with a crease, and this is undenied. The Democratic ballots were folded with a crease through the center, so that every man who came there to get the Democratic tickets from a certain place in that district could get that ballot, and they voted it. It was absolutely a marked ballot.

Mr. Chipp — Have you the statute there, Mr. Simons?

Mr. Simons — No; I have here the contested election cases in the Assembly. I produce this book for the reason that there are numerous arguments in it, based upon similar cases, written by both Republican and Democratic prevailing committees. I desire now, by way of parenthesis, to say that this is beyond politic. It is a matter, in my judgment, which appeals to conscience. It is a matter which the citizens, irrespective of party, are interested in. It is not a simple question as to whether Trapper and Beckwith shall be in this Convention, because it makes no difference to the deliberations of this Convention, except in one way, and that is, it ought not to be said that the Constitutional Convention, organized as it is as the highest law-making body in existence, that this body can predicate any action with anybody participating in it who are touched and tainted with fraud as these men are. As far as Mr. Trapper is concerned he substantially makes no contest upon the merits, and never has, but has appealed to his writ of prohibition as a defense under which he may be kept in this body.

Chairman Hirschberg — He is the one not represented here.

Mr. Simons — He is not represented.

Mr. Delaney — Mr. Chairman and gentlemen of the committee, there has been associated with me as counsel for Judge Beckwith in this case Mr. W. H. Cuddeback, and it was intended, after the submission of the evidence, that Mr. Cuddeback should appear before this committee and should present Judge Beckwith's case for your consideration. Mr. Cuddeback has been unable to do so, and I appear in his place.

I believe that there are nearly 2,000 pages of testimony in this case. I presume, in fact I have been informed, that this testimony has not yet been read fully, either by the sub-committee before which the evidence was taken, or by the committee at large. I do not propose to enter into an exhaustive analysis or discussion of the testimony, rather contenting myself with briefly referring to some of its salient features.

As appears from the argument of the counsel, they rely almost wholly in their endeavor to unseat Judge Beckwith upon irregularities, the lawless acts and the various misdeeds that were committed in the fourth district of the First Ward. The First Ward of the city of Buffalo, as your sub-committee has learned from personal observation and as the evidence will disclose, is situated in the lower part of the city, is bounded by the river, the harbor and the canals. Its population consists principally of the laboring class. Men working in the many elevators along Buffalo river, railroad men and men employed upon the docks. Last fall there was a contest for the office of alderman; it was the only political contest in which the inhabitants and the voters of the First Ward took the slightest interest. Mr. White had been the representative of that ward for a great many years. Some of his warm friends had broken with him and had publicly and privately, and in all manner of ways, declared that Mr. White would be defeated, and that they proposed to defeat him. His former friends meant what they said. It is a fact that the registration in that ward increased to a very large extent. It is also a fact that the population of that ward is of a shifting, changing character. The large number of men employed upon the lakes and along the canals are migratory in their habits. In that ward there are a large number of boarding-houses and saloons that run in connection with boarding-houses. So far as this great increase in the registration is concerned, it is easily explainable and can be sensibly explained. The counsel has referred particularly to 133 Main street, 33 Exchange street and 165 Washington street,

from which a very large number of men were registered. The evidence will disclose that those places were always boarding-houses. This large registration from those particular places was made before the board of registry on the first day of registration. It was done openly. The law provides that any elector residing in a ward for thirty days before election may register for the purpose of voting upon election day. This large registration from these three suspected places occurred upon the first day of registration. They did not wait until the last day. There was no secret about it. These men went into that ward for the purpose of securing a legal residence there, as they had a perfect right to do, and they registered from these places. The adherents of Mr. White became alarmed. They became frightened. They immediately took means, after looking the ground over, to ascertain whether or not that registration was a legal one, and what did they do? They took proceedings before the Superior Court of Buffalo. They brought the question up before one of the judges of the court as to whether the men registered from those places were there legally or not, and this fact appeared in that proceeding. It is shown by other evidence that they had accommodations at those places; that the people slept there; they were considered as living there and residing there, and they certainly had a right to vote from those houses. Can it not be just as well claimed that the issuing of these 129 warrants, waiting until the night before election to issue them, can it not be just as well claimed that that was done for the purpose of scaring away those men, intimidating them from voting a ticket that it was generally supposed and believed that they would vote? Why did they wait until the night before election to issue the 129 warrants if it was for any other purpose? Because, as I said before, after the first day of registration, four weeks before election, it was known that that registration had taken place. On election day, in the morning, what does the evidence disclose as to the situation of affairs? That a large, organized number of Italians, organized solely in the interest of Mr. White, went to that place at three o'clock in the morning. Why did they go there at that hour? It was hinted and charged, and I haven't a particle of doubt but that it was the fact, that it was the intention of Mr. White's adherents to vote every man just as soon as they could, and then, by challenging the vote as it came in, to delay the casting of the large number of votes that were expected to be cast on account of the largely increased registration in that district. What was the conduct of Mr. Aeschback, who was one of

the Republican members of that board of registration, acting on that board of registration on election day? Every man who came up as being registered from 133 Main street, 33 Exchange street or 165 Washington street was challenged. When I asked him why, if there was any reason, if he knew of any reason why those men were not entitled to vote, he simply said it was because they were registered from those places, and that is all. Judge Hatch, before whom the question was brought as to whether these men had a right to be registered from those places or not, out of all the names that were registered, directed the board of registration, whom he had in court, to strike but twelve names from their list. Is it not fair to assume, gentlemen of the committee, that the rest of those men did have a right to vote upon election day?

On election morning we find this crowd of 100 Italians, under the leadership of Tony George, who was an out and out adherent of Mr. White's, and who electioneered for him; we found them there at the polls at three o'clock in the morning. Mr. Martin, who had formerly lived in the First Ward, and was a well-known local Republican politician, and who, at that time, lived two miles away from the ward, arrived there at very nearly the same time. He went to the headquarters of the White workers on an adjoining street, and, with eighty paid workers in the interest of Mr. White, marched over and formed in line with the Italians. Why was that done if it was not done for the purpose of getting their vote in as soon as possible and thus obstructing the casting of the Democratic vote. Sixteen of the regular policemen, under the leadership of Captain Regan, marched to the other side of the polling place. It was just as easy to approach the polling place from one side of the booth as from the other. There was a sidewalk running along, and this line that had been there from three o'clock in the morning, in the interest of Mr. White, was formed from the booth easterly, or rather northerly, towards Perry street. Captain Regan, when he got there—and I will here say that, under the charter of the city of Buffalo, which is, of course, the statute and act of the Legislature—under the charter the conduct of election is specially vested in the police department. Captain Regan, when the men on the other side, who were there in the interest of the other candidate, when they came together and there was a dispute as to which line should be recognized, Captain Regan ordered the men to file in on the other side, and it appears that they did, and the men began to vote. Charges of all kinds of lawlessness had been made relative to the conduct

of this fourth election district of the First Ward. The registration was over 800; I think it was 889. The vote cast was about 650. The voting was necessarily rapid. They have produced witnesses here who swore that they assisted men in the compartments to fold their ballots. I do not know that that is a crime.

Mr. Simons — What! Stationing a man in there is not a crime?

Mr. Delaney — I do not know that it is a crime. I see that the Legislature has recently made it such. But, at any rate, no matter who assisted a man to fold his ballot, it was a mere act of assistance, and in no way prevented him from exercising his right of franchise and voting whichever ticket he pleased.

Mr. Deady — Do I understand you to say that it is not a crime for a voter who is not incapacitated, I mean physically incapacitated, that it is not a crime for a person to go into the ballot booth with him?

Mr. Delaney — I am not prepared to say.

Mr. Deady — Some men have been indicted and convicted in New York within six months for that same thing.

Mr. Simons — I will produce the statute to that effect.

Mr. Chipp — Do you dispute the fact, Mr. Delaney, sworn to by these witnesses, that during the morning there were two or more in the compartment all the while?

Mr. Delaney — No.

Mr. Chipp — It seems to appear through the evidence.

Mr. Delaney — No; it is an undoubted fact.

Mr. Chipp — Then that is conceded.

Mr. Delaney — It is an undoubted fact that men were in there, but I claim, so far as that is concerned, that it did not in any way vitiate the ballots that were cast so far as the individual preference of any voter was concerned.

Chairman Hirschberg — Were those two men who were in the compartments residents of Buffalo?

Mr. Delaney — Yes, sir.

Chairman Hirschberg — Were they examined as witnesses?

Mr. Delaney — One of them was. Cook was.

Mr. Simons — Cook was a boy eighteen years old. He was not sworn at all, Mr. Delaney. You did not introduce his evidence. He was sworn on the Beck investigation. The other one was Sullivan.

Chairman Hirschberg — The reason I asked the question was that all the witnesses concurred, I think, in the statement that, at a certain time, at least during the forenoon, there were these two men in the booth all the time, and at times the compartment was so full that you could not get the door shut — I think one or two said; and I wanted to see whether you disputed that fact.

Mr. Delaney — Notwithstanding all the claims that have been made here as to illegal practices, they have been able to produce but two Italians, who swear that, in order to be enabled to cast their vote, that they had to promise to vote for Mr. Sheehan for alderman. You will find upon the cross-examination those men were unable to swear whether or not they did actually vote for Mr. Sheehan, or whether they voted for Mr. White.

Mr. Simons — They swore they were handed the tickets though.

Mr. Delaney — Yes, but they were unable to say for whom they voted, the two men whom they produced. And notwithstanding the fact that, in various investigations, all the facts and evidence it was possible to get has been adduced, notwithstanding that, they are unable to produce a single man who was denied the right to a vote in that district. They are unable to prove that there was a single vote cast by a man who did not have a right to vote. Now, those are the facts in the case when you come to simmer it right down, that, notwithstanding all the arguments, that notwithstanding all the discussions, all the scuffling and all the dispute at the opening of the polls as to which line should be recognized, as to who should vote first, the fact remains that every man who wanted to vote in the fourth district of the First Ward was allowed to vote, and that not a man voted but that had a right to vote. There is no dispute in this case as to the result. The counting of the votes was agreed upon. There is no dispute as to the return that was filed. And all there is about this case is the fact that the newspapers in Buffalo, owing to this largely increased registration, predicted bloodshed; said there was going to be trouble and fight. And, gentlemen, if you knew some of the carryings on and the manner of procedure in elections in this same First Ward in previous years, you would say, as a large number of witnesses who were called by us have testified, that it was the quietest election that was ever held in the First Ward.

Mr. Chipp — Well, but they rather claim, Mr. Delaney, that it was the peace that reigned in Warsaw. They claim that you had a hundred deputy sheriffs there. I call these points to your attention simply to hear what you have to say in regard to it.

Mr. Delaney — They have no proof that any one was disfranchised, or that there was an illegal vote cast.

Mr. Lincoln — Will you explain the question of challenges? I think Mr. Simons said nothing about that. There is some evidence here, I think, I do not recall it fully, on the question of challenges; that the challenges were disregarded.

Mr. Simons — It is undenied.

Mr. Delaney — The only testimony on that, as I understand it, was that of Mr. Aeschback and Thayer, who swore that he challenged and that no attention was paid to it. But his memorandum carries out what we claim to be true, that the oath was administered; his memorandum, if you observe, states after each name where he challenged, "oath administered." I assume it is only fair to claim that the oath was administered.

Mr. Chipp — I think they all stated the oath was administered,, but the criticism they made was as to the form of the oath and the manner in which it was administered.

Mr. Chipp — Mr. Chapin said that the oath was administered, but in a low tone.

Mr. Lincoln — They also claimed that the oath was administered in many cases after the ballot was deposited in the box.

Mr. Deady — The challenging and the administering of the oath only go so far as to punish the voter who votes illegally. It would not deprive him of his vote.

Mr. Delaney — If the vote had been illegally cast I think they should prove it.

Chairman Hirschberg — I should like to know something more about that boarding-house where you say 133 men were registered.

Mr. Delaney — No; the number was 133 Main street. One hundred and twenty-nine men were registered there.

Chairman Hirschberg — How large a place was that?

Mr. Delaney — There were 129 warrants issued, but that covered the three places.

Chairman Hirschberg — Well, how large a house was it?

Mr. Delaney — A three-story brick house.

Chairman Hirschberg — What front?

Mr. Delaney — A frontage of twenty-five or thirty feet.

Chairman Hirschberg — You claim, as I understand it, that these men were not normally residents of that house the year around.

Mr. Delaney—I do not claim anything on that. I claim they registered from there on the first day of registration.

Chairman Hirschberg—You say they acquired a residence there for the purpose of this election?

Mr. Delaney—I claim it was a saloon and boarding-house, had been used for a long time prior thereto as such.

Chairman Hirschberg—Does your evidence show that those men, or any of them, actually lived in that house?

Mr. Delaney—Yes, sir.

Chairman Hirschberg—When?

Mr. Delaney—At the time they registered. There is no evidence as to whether they lived there, either produced by us or by the contestants, and in that connection, as I stated before, whether those men were residents there or not, whether or not there were accommodations there for that number of men was the subject of judicial inquiry prior to the election, and out of all the names claimed, before Judge Hatch, to have been illegally registered, only twelve were stricken from the list.

Chairman Hirschberg—I wanted to know whether there is any evidence in this case on either side, to indicate what accommodations there were in that house, and whether, or not, it was adequate to take in that number of persons.

Mr. Chipp—There is some evidence, as a matter of fact. I asked the question of one of the witnesses as to how large a house it was.

Mr. Delaney—But the chairman means, I suppose, what it was immediately before the first day of registration.

Mr. Deady—And what it was at that time, whether it had accommodations, beds and rooms to accommodate that number of men, no such inquiry was made.

Mr. Delaney—No; that fact appeared.

Mr. Deady—The fact appeared that, during the time, after the first day of registration that there were sufficient accommodations in that house for 129 men.

Mr. Simons—Who swore to that?

Mr. Delaney—That is in the case. In the Beck case.

Mr. Simons—Give me the name of the witness.

Mr. Delaney—I am not able to state now. I have not read all the evidence.



Mr. Lincoln — I would like to ask the counsel one question further in reference to registration. I recollect, I think, that it was claimed on the hearing before the sub-committee, that Judge Hatch dismissed the question of striking names from the registry list on the ground of lack of jurisdiction.

Mr. Simons — I want to say, in justice to Mr. Delaney, that Mr. Delaney was, during that half hour, absent from the committee, and he has made that statement, doubtless, through inadvertence.

Chairman Hirschberg — Mr. Delaney may proceed with his argument.

Mr. Delaney — Well, the fact remains, and it is undisputed that the judge must have had some jurisdiction on the subject because he ordered twelve names stricken from the list.

Mr. Lincoln — There is something of that sort before this committee, and I wanted you to comment upon it if you saw fit.

Mr. Delaney — On the question of the deputy sheriffs, if the committee please, the facts are these, the undisputed facts. At the request of Mr. Connors, Mr. Kennedy, Mr. McDonough and Mr. Lynch, all of whom the evidence shows, and there is no question about it, are reputable and well-known citizens of Buffalo, that a hundred and twelve deputy sheriffs were appointed. They were appointed for the purpose of preserving peace and order in the city of Buffalo on election. They were not confined to any one district. I have the form here of the certificate which was issued to each one of those men and might, perhaps, as well read it to the committee (counsel reads certificate referred to). The question was raised before the sub-committee on the hearing at Buffalo, as to whether those certificates were filed as required by law. I don't know that that question will be raised here.

Mr. Simons — They never were filed.

Chairman Hirschberg — It cannot make any difference.

Mr. Delaney — No, it cannot make any difference, except that Mr. Lincoln asked the question and I think we had a discussion on the subject.

Mr. Lincoln — I also asked the question whether there was any statute authorizing the appointment of deputies in that way.

Mr. Deady — I do not see how that is material.

Chairman Hirschberg — The salient point about that is that the accusation was made that those 112 men were appointed and put

into that district for the purpose of assisting an illegal vote to be cast, and it is to that that you had better direct your remarks.

Mr. Lincoln — I suppose it was material in the Beck investigation?

Chairman Hirschberg — Yes; but here the question is, whether they were put there to help or hinder legitimate voters from casting their votes.

Mr. Delaney — They were appointed to preserve peace on election day and they were appointed for that day only.

Mr. Chipp — How do you reconcile that with the fact that if the witnesses on the other side are to be believed, there were so many cases of assault and battery.

Mr. Delaney — How many cases of assault do they prove?

Mr. Chipp — Well, let us see. They say that Tony George was thrown out of the procession.

Mr. Delaney — Yes, and I am glad you spoke of him.

Mr. Chipp — I want to call your attention to these things, because probably the committee will want to speak of them. And young Lindenbach, his lip was injured and he was thrown out. Fullerton was knocked down.

Mr. Delaney — Mr. Fullerton had no business there.

Mr. Chipp — Then there was a fellow named Katte, and, according to Mr. Aeschbach, somebody was knocked down and dragged out every five minutes or so.

Mr. Delaney — Who, he could not say.

Mr. Chipp — I am only speaking of what he testified to.

Mr. Delaney — So far as Tony George, the leader of these Italians, was concerned, I intended to state while speaking of him that it appeared that he had charge of these Italians for one purpose; they were there in the interest of White. I think about the time the polls were opened he became unruly and was arrested for carrying concealed weapons. A revolver was found upon his person, which he swore before the committee that he had never carried before. I assume he carried it on that day for election purposes.

Mr. Chipp — I do not think the committee have very much sympathy with Tony, Mr. Delaney. I suppose you might go on with the next man.

Mr. Simons — He was an old citizen of Buffalo, had been for years.

Mr. Delaney—So far as these deputy sheriffs were concerned, and the appointment of them, if any stress is to be laid on that by the committee, I desire to say that it has been customary in Buffalo to do that very thing, to appoint deputy sheriffs. The year before the Republicans appointed a large number of deputy marshals. They were then in power. They were for the purpose of acting down in this same neighborhood.

Mr. Deady—That is provided for by the United States law.

Mr. Delaney—Well, there is no doubt that the sheriff had power to appoint these deputies.

Mr. Deady—The appointment of marshals was expressly provided for by the act.

Chairman Hirschberg—There is no criticism on the appointment, but why were so many sent into one district. I don't suppose they sent 112 marshals the year before into any one district or two districts.

Mr. Delaney—This was into four districts.

Chairman Hirschberg—You dispute the statement then?

Mr. Delaney—They were in four districts there, throughout the First Ward. When deputies were nowhere else.

Mr. Simons—The deputy marshals were appointed for the Nineteenth Ward.

Mr. Delaney—That joins this ward. It is in the lower part of the city, where we have had whatever trouble has ever been had in Buffalo. It is the lower part of the city, and usually as is this case, owing to some very heated contest over a ward office. That is what gave rise to all this trouble there. I don't suppose a man down there knew who was running for a delegate to the Constitutional Convention.

Chairman Hirschberg—I have heard it claimed that sometimes a hot contest over an alderman will bring out a larger vote than a presidential election.

Mr. Delaney—Down in that ward they count the vote for alderman first after the polls close.

Mr. Lincoln—So as to be sure of it.

Mr. Delaney—So as to relieve the anxiety that all concerned have.

Now, Mr. Chairman, as I said before, I do not care to go into particular detail or a very specific analysis of this testimony. I

take it that the testimony will be read by this committee, and, of course, we would like to have you look upon it as we desire.

So far as Judge Beckwith is concerned, who is the contestee in this case, I wish briefly to say that he is an honored citizen of Buffalo. He has held many positions of trust and honor in that city. He has been a life-long resident there. For fourteen years he was judge of the Superior Court of Buffalo, and for the last six or eight years he was its chief judge. We have been denied and deprived of his valuable assistance in this contest by reason of his continued illness. He is suffering from rheumatism and has been unable to get out since this Convention has been in session.

A great many have urged upon him to take the same steps that his associate, Mr. Trapper, has taken, and he declined emphatically to do it. He wished me to state to this committee, that if he thought for one moment that the title to his office, as delegate to this Convention, was besmirched in any way, with fraud, or if he thought that he was not legally elected, honestly elected, he would not make any defense to what is claimed here by the contestants. He believes he was elected, I think he was elected, and, as I said before, that notwithstanding all the charges that have been made, notwithstanding all the newspaper talk, notwithstanding all the rumors, when it is simmered down and boiled down, the two facts stand out prominently, that they have not produced a single man who was unable to vote by reason of any lawlessness or any obstruction or any hindrance, and they have not proved that a single man who did vote was not entitled to vote. There is no question about the count, as it was certified to by the various electors and officers; and upon the face of those returns Judge Beckwith was elected, he thinks, honestly so, and he desires to sit in this Convention as one of your fellow-delegates.

Mr. Simons — Will the committee permit me just a word? There is some evidence in this case which was entirely new, never produced before, and I made a memorandum of what impressed my mind as the most forcible portion of Delaney's argument; the first is as to 133 Main street. The evidence is that Kilcourse a day or two before the sitting of the board, went there to take this lease; that was absolutely new evidence; and got control of this house himself, and that two days after election the house was to all appearances shut down in the same condition that it had been before.

Chairman Hirschberg — Was it deserted before?

Mr. Simons — No, there was a woman who ran the house as a restaurant and boarding-house.

Chairman Hirschberg — How many inmates were there just before election?

Mr. Simons — It does not appear any. The only evidence is that is new, that this was rented two days before election day by Kilcourse, and that these men registered, and that the appearance after election — they could never find these men, never could find but four.

Mr. Lincoln — How many voted from 133?

Mr. Simons — Sixty-five; I am glad to have you ask me that question, but I want to make one statement here emphatically. It was charged all the way through that Judge Hatch had passed on this question of fact, and that he decided all these men were properly registered. That is a great injustice to us, and while Mr. Delaney was not there one day, but his associate counsel was there, I sent for Judge Hatch, and the members of the committee will remember it. It appears in evidence that under an opinion of Judge Russell, when it appeared as a matter of fact that the voter's name was regularly on the list and any question whatever arose about it, that he declined to pass upon it. The judge so stated; that the case never was passed upon on the merits as to these men being legally qualified voters. The application was made to the board to strike these names off and that the paper was taken by Connelly and torn to pieces and thrown upon the floor is undenied. That is a matter which the committee ought to bear in mind particularly.

Mr. Lincoln — You claim Judge Hatch did not pass on the merits?

Mr. Simons — He swears so.

Mr. Chipp — What do you say about Mr. Delaney's argument and statement, which I think is true, is it not, that there is no evidence that any one was deprived of his vote and no evidence that any one voted illegally?

Mr. Simons — I desire to meet that point squarely. I will answer it, that the evidence is overwhelming on two propositions. The evidence is that men were driven away from these polls, and, to the best recollection of men who saw them there, that many did not return. That is sworn to by several witnesses.

Mr. Delaney — Where are those men?

Chairman Hirschberg — Where is the evidence that they were legal voters?

Mr. Simons — They were formed regularly in line just the same as people who came there for the purpose of voting. They were waiting their turn. They reached the door and were thrown out and this line was broken up. Some went back to their homes, and that appears as to a number of men, Maraffino, Gondiosso, Katte, Lindenbach and Annis.

Now, this was a serious matter for this reason. These were conceded residents and voters in that district. They were assaulted and driven away from the line, and it is all the more shame that these pugilists should have struck down these innocent men because they happened to be of that nationality. They were citizens and they were entitled to vote, and it is no laughing matter that such men were driven away, and two of them were compelled to vote the Democratic ticket, and one of them, Annis, an old citizen, twice assaulted, driven from the polls, and finally went home discouraged.

As to the point that there is no proof as to a single man who voted illegally, I would ask why not. We got out the warrants for 129 men and the police keep the warrants for weeks and weeks and finally arrested four men in all.

Mr. Delaney — They arrested seven men and those seven men were discharged. There has not been a single one of those 129 men who has spent one day in jail or in prison. I say that was done more for the purpose of scaring away voters than anything else.

Mr. Simons — Is it not true that these warrants were held by the police department for weeks, and that sixty-five of them voted on election day?

Mr. Delaney — Oh, no; they were issued the day before election.

Mr. Simons — But they were held for weeks after election, and only seven were arrested out of 129. Sixty-five of them voted from 133 Main street. Is it not also an undisputed fact that twenty-five men voted from 33 Exchange street, and that the house was closed and no trace of a man could be found on election day? Is there anything against that?

Mr. Delaney — Oh, yes.

Mr. Lincoln — It was closed by summary proceedings, was it not?

Mr. Simons — Closed, vacated and cleaned out. Not a man living there.

Chairman Hirschberg — You admit the fact that there is no evidence that these men were not legal voters?

Mr. Simons — Out of all we could find; they found seven men.

Chairman Hirschberg — The list shows that 505 Democrats voted. Do you claim to have proved as an affirmative fact that any of these 505 were not entitled to vote in that district?

Mr. Simons — Yes, we claim to have proved as an affirmative fact that the sixty-five men, whoever they were, who voted from 133 Main street, were not entitled to vote.

Chairman Hirschberg — You have their names?

Mr. Simons — We have their names and they were unable to be found.

Chairman Hirschberg — Is there evidence to the fact that they could not be found?

Mr. Simons — Only the evidence of the police.

Mr. Delaney — Whom you claim were negligent in the discharge of their duty.

Mr. Simons — I say these men could not be discovered.

Mr. Delaney — Then the police did their duty.

Chairman Hirschberg — I suppose, Mr. Simons, that your evidence shows that they were not residents of the place from which they registered?

Mr. Simons — Yes, it does show that.

Mr. Deady — Mr. Simons, is there any testimony that any of those witnesses who were maltreated in the early part of the day, and were driven away from the polls, is there any testimony whatever that they did or did not vote when they came? I think the question was suggested by our chairman.

Mr. Simons — Yes, sir.

Mr. Delaney — The evidence is that they did vote.

Mr. Simons — If you will wait a moment I will answer. I say it was impossible for us to identify every particular case of violence. These acts of violence were frequent and occurred throughout the morning. But we produce the men that were assaulted. Now, George Vito was taken into the polling booth and Kennedy asked him to vote for Sheehan and he said, "I am my own master, and I intend to be as long as I am in this country." Marraffino

was assaulted, but subsequently voted, and voted the Republican ticket. Katte and Gondiosso were both brutally assaulted. They were taken away and finally put into the polling booth by Jim Naples, who was working for the Democratic ticket. Kennedy directed him to these compartments and they received the Democratic ticket and voted it. William Lindembach was assaulted and finally voted. At the request of Kennedy he went into these compartments, but he voted the Republican ticket. William Annis, a citizen of this district, was assaulted. He reached the poll a second time, was again assaulted, and went home and did not vote. That is the evidence of the specific men who were assaulted. Fullerton, the Republican watcher, was struck by Billy Baker, the pugilist. He was not a voter, but Baker was arrested for the assault and sent to the penitentiary.

Mr. Delaney—I think the less you say about Fullerton the better.

Mr. Simons—John W. Williams was assaulted twice and driven from the polls.

Mr. Delaney—No, he was not assaulted. He had difficulty in getting to the booth, that is all.

Mr. Simons—I want to ask Mr. Delaney just one question. If there is any evidence anywhere in this entire printed book or otherwise that these deputy sheriffs that were appointed were not appointed for those two districts under McDonough and Kennedy for that district and for Connors for his district; if that is not substantially the only evidence, and that these deputies were appointed from 133 Main street, 33 Exchange street and 444 Ohio?

Mr. Delaney—They were appointed from various places.

Mr. Simons—I have the list here which will show just where they were from. Ten of them were from 444 Ohio street. “Did you tell them anything about how they were to be paid? A. No, sir. Q. Was nothing said as to pay? A. Nothing said as to pay. The reason of that was because they were all to be workers at the polls.” The first talk was the night before. “Q. And who did you say was there? A. Well, if my recollection serves, I think John was there, and John J. Lynch and Myron Wood.” Lynch was from the Second Ward. Those were the men who put up that scheme in regard to the deputy sheriffs.

Now, is it not apparent, when Mr. Delaney admits to the committee that these two men stayed there the entire morning and folded these votes, one a minor put in there by Caulfield, the



Democratic supervisor, and the other Sullivan, a deputy sheriff, and bartender in Kennedy's saloon, that they cast that vote?

Mr. Delaney — How can it possibly be claimed that those men cast the vote?

Mr. Simons — Because Kennedy took charge of the two compartments, took the men in there, asked them to go in and they took the ticket from him.

Chairman Hirschberg — By compartments do you mean the booths the voters are required to go into?

Mr. Simons — Yes, sir.

Chairman Hirschberg — Is it agreed that the voting was chiefly done from those two booths?

Mr. Simons — Yes, sir.

Mr. Chipp — Now, there are certain irregularities that seem to be conceded here. Do you claim that all you are obliged to do is, to show certain violations of law at that poll, and that if you show enough of them, this committee is required by the statute to throw out the entire vote of the poll?

Mr. Simons — Yes, sir; I claim that. I want to say further that I claim where it appears that these irregularities consisted not only in the action of the board of inspectors, but in the conduct of the people outside the board, namely, the deputy sheriffs, Kennedy and Kilcourse, and especially where it was shown the vote was cast in a fraudulent manner, coupled with the evidence that the vote itself was fraudulent, that is, from illegally registered places, that with the fraud and violence on the outside and the voting as it was done in squads, that that makes a vote which is throughout fraudulent.

Mr. Chipp — Let me ask you one more question. Suppose there were no evidence of illegal registration, or supposed illegal registration, and the only evidence was as to these parties being in the voting compartments, and of general oppression and intimidation on the part of these deputy sheriffs, would that in your judgment be sufficient in law to throw out the entire vote?

Mr. Simons — Undoubtedly.

Chairman Hirschberg — Are these two men who were in the booth representatives of the police department?

Mr. Simons — No; one was a deputy sheriff appointed at the request of Kennedy and the other was a minor.

Mr. Delaney — He is stating what I do not admit as far as the

man being a deputy sheriff is concerned. He was not a deputy sheriff.

Chairman Hirschberg — Did these two men represent the police department?

Mr. Delaney — No; they were not police officers.

Mr. Simons — Cook was a minor, and he was put there by Caufield, the ex-Democratic supervisor.

Chairman Hirschberg — Does the evidence show that?

Mr. Simons — The evidence shows that.

Chairman Hirschberg — Who put the other man in?

Mr. Simons — He was a bartender for Kennedy. He was in there the moment the polls organized.

Chairman Hirschberg — Was there any protest as to his being there?

Mr. Simons — The Republicans protested all day long.

Mr. Delaney — On that proposition I say this, that unless it is shown that the irregularities complained of affected the vote itself, the casting of the vote, the act of the voter handing his ballot to the chairman of the board, for the purpose of being deposited, I do not see that it can possibly be claimed that the vote of that district should be thrown out.

Mr. Durfee — Do you claim that the committee or the Convention are to be governed by the same rules in passing upon these questions as a court would be in *quo warranto* proceedings?

Mr. Delaney — I think so; yes, sir.

Mr. Simons — That is not true.

Mr. Chipp — I think they ought to be.

Mr. Delaney — I raised that question before the sub-committee that I thought the proper remedy was *quo warranto* rather than this proceeding.

Mr. Deady — I would like to ask you one question. Suppose we should find as a matter of fact that this intimidation and these assaults on the voters were done for the purpose of preventing them from voting, for the purpose of driving them away from the polls, and we should find as an inference from that, that it did accomplish this purpose to a certain extent, what would you say to that? If we found those facts what would you say as to that being sufficient to throw out the vote?

Mr. Delaney — I say they proved no facts to warrant that inference.

Chairman Hirschberg — Assuming that on our examination we find that they do warrant that inference. Suppose we find that as a fact?

Mr. Delaney — Then as to what your powers are?

Chairman Hirschberg — What the law is.

Mr. Deady — Whether that would be sufficient in law to found a judgment on that this whole vote should be thrown out?

Mr. Delaney — I really cannot say that I am prepared to answer that question. I would look the question up if there is any question on the part of the committee.

Mr. Simons — If the committee will permit me to read from this book. I have carefully investigated the subject, and I can produce a list of cases as long as your arm in regard to it, about which there is no dispute. But I desire to read the language from one of these cases which is found in this book of contests. (Counsel reads opinion referred to.) That is an opinion in one of the election contests.

Mr. Chipp — Is it the opinion of a court?

Mr. Simons — No; it is the Assembly committee.

Mr. Chipp — I guess we can give as good an opinion as an Assembly committee. It would be a little more satisfactory to have the opinion of a court.

Mr. Simons — The committee will find in the 55th New York, in the case of the People v. Thacher, the exact authority deciding that this return is, of course, simply *prima facie* evidence. If fraudulent conduct is shown, if sufficient evidence of fraud is submitted to a jury to justify a finding of fraud, is submitted to the committee or the court, that the return stands nil, stands for nothing, and we must resort to such evidence as is produced to ascertain what the vote of the district was or ought to be.

Chairman Hirschberg — There is no question about that principle. Of course, you go behind the returns. That is what we are here for, to go behind the returns. Nobody disputes that.

Mr. Delaney — I have just seen the elaborate brief of Mr. Simons, and I simply desire to bring up a question of taste on his part. I see, under subdivision 7, "consideration of evidence offered in behalf of the contestees." I submit it is not fair treatment of either me or my clients. "No witnesses were produced by the contestees, but by stipulation the evidence was read as the contestees desired from the Beck investigation."

Mr. Simons — Is not that fair?

Mr. Delaney — After specifying what the Beck investigation was, I except to this, "While it may be plausibly stated by the attorney for the contestees that this method of introducing testimony was unfavorable to them, I beg to remind the committee that the gentlemen conducting the other side in all probability would have taken no course prejudicial to them, inasmuch as delay seems to be sought for by the contestees, by proceedings in court which may lengthen the life of their official positions." I submit it is not fair to us, because it was stipulated that the evidence should be read with the same effect as though the witnesses were produced. And still, without any knowledge on my part, and without adverting to it here in his oral argument, he injects that into his written brief.

Chairman Hirschberg — You may find other things in the written brief that you do not like, and you may file anything you choose in opposition.

Mr. Chipp — As far as that is concerned the committee forced him to do it, practically.

Chairman Hirschberg — I would suggest that anything that the contestees' client sees in this printed brief that he wishes to reply to, that he is at liberty to file a printed reply to it and that the committee will take it up at any time before they dispose of the case.

Mr. Chipp — How long a time would you like?

Chairman Hirschberg — Suppose he does it within a week.

Mr. Simons — It occurs to me, with what the contestees have done in this case, with the earnestness and zeal with which they desired to prosecute it, with the fact that Mr. Delaney is known to be the most familiar man with this evidence of any who have had to do with it, that it is hardly fair to delay this committee to prepare a brief in reply to mine. I have not seen his brief and I submit it was fair for him to come here with his brief prepared; I have worked day and night to get mine ready for this committee, and if any extension is given him in this regard I submit it should be on some fair notice to me. I should like to have him submit his brief not later than Monday.

Chairman Hirschberg — Is that time enough, Mr. Delaney?

Mr. Delaney — No, I think I should have a week.

Chairman Hirschberg — How long a time would you like after that, Mr. Simons?

Mr. Delaney — I will submit my brief to him. I will state on that subject that my understanding of investigations of this character has been that there should be an oral summing up followed by a brief. I understand that has been the practice before.

Chairman Hirschberg — That is right. Mr. Delaney may submit his brief to you within a week, and you may submit whatever you desire in reply.

Mr. Cookinham — Do we understand Mr. Delaney is to submit a brief a week from to-day and that Mr. Simons should submit his also at the same time?

Mr. Simons — I have already submitted mine.

Chairman Hirschberg — Perhaps Mr. Delaney will not submit any.

Mr. Delaney — I will determine whether I will submit any or not.

Mr. Lincoln — And submit it first to Mr. Simons?

Mr. Delaney — Yes, sir.

The committee then went into executive session.

## DOCUMENT NO. 11.

(In Response to Resolution No. 30, Vol. I, Page 312.)

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REPORT OF THE COMMITTEE ON PRINTING.

Mr. Hamlin, from the Committee on Printing, reported as follows:

IN CONVENTION,  
ALBANY, N. Y., *June 5, 1894.*

The Committee on Printing, to whom was referred the subject-matter contained in the following resolution, offered by Mr. Becker, viz.:

Resolved, That the Committee on Printing ascertain and report on the second legislative day of next week the propriety of furnishing a daily report of the proceedings of this Convention to each of the daily newspapers printed in this State, and the estimated expense thereof; and that the committee also report as to the printing and binding of 500 copies of the debates of the Convention, to be distributed in the manner and to the persons named in rule 71,

Do hereby respectfully report:

First. That it is the opinion of the committee that to print and send out the Journal as provided for by the foregoing resolution will cost about \$2,000, and that, included with other printed matter therein referred to, will cost from six to ten thousand dollars; that in view of that expenditure of money this committee does not feel justified in recommending the adoption of that portion of said resolution.

Second. This committee does further report that the printing of 1,000 copies of the *verbatim* reports of the proceedings and debates be continued, and that 500 of said 1,000 copies be bound in plain, substantial binding for distribution as provided for and in the same manner as provided by rule 71 for the distribution of the Journal and reports of committees.

## DOCUMENT NO. 15.

(In Response to Resolution 40, Vol. 1, Page 134.)

List of Delegates to the Constitutional Convention of the State of New York for the Year 1894, with their Politics, Post-office Addresses and Committee Assignments — also List of Officials and Convention Rules.

Hon. Joseph H. Choate, President, home post-office address, No. 50 West Forty-seventh street, New York.

District.	Name, Politics and P. O. Address.
22.	Vasco P. Abbott, Rep., Gouverneur.
27.	Milo M. Acker, Rep., Hornellsville.
1.	Nathaniel S. Ackerly, Rep., Northport.
3.	William H. Allaben, Rep., 905 De Kalb avenue, Brooklyn.
24.	Thomas G. Alvord, Rep., 514 Turtle street, Syracuse.
16.	Charles W. H. Arnold, Rep., Staatsburg.
22.	William H. Baker, Rep., Constantia.
19.	A. Bleecker Banks, Dem., 327 State street, Albany.
28.	John A. Barhite, Rep., 27 Madison street, Rochester.
23.	James W. Barnum, Rep., Cherry Valley.
24.	George Barrow, Rep., Skaneateles.
31.	Tracey C. Becker, Rep., 160 Highland avenue, Buffalo.
30.	Charles Beckwith, Dem., 168 W. Chippewa street, Buffalo.
8.	John Bigelow, Dem., 21 Gramercy Park, New York.
14.	Stephen S. Blake, Dem., 1466 Lexington avenue, New York.
7.	John M. Bowers, Dem., 30 West 18th street, New York.
20.	Edward A. Brown, Rep., Dolgeville.
22.	Elon R. Brown, Rep., 42 Massey street, Watertown.
11.	William P. Burr, Dem., 362 West 46th street, New York.
17.	George H. Bush, Dem., Ellenville.
D. at L.	J. Rider Cady, Rep., 25 Union street, Hudson.
13.	James P. Campbell, Dem., 52 West 84th street, New York.
31.	Jonathan W. Carter, Rep., Eden Valley.
27.	Owen Cassidy, Rep., Havana.
17.	Howard Chipp, Jr., Dem., 183 Fair street, Kingston.
32.	Frank B. Church, Rep., Wellsville.
28.	George W. Clark, Rep., Penfield.
25.	H. Austin Clark, Rep., Owego.
2.	William H. Cochran, Dem., 605 Third street, Brooklyn.
31.	John Coleman, Rep., 32 Newell avenue, Buffalo.
23.	Henry J. Cookinham, Rep., 5 Clark place, Utica.
26.	George R. Cornwell, Rep., Penn Yan.
19.	Edwin Countryman, Dem., 202 State street, Albany.
12.	John D. Crimmins, Dem., 40 East 68th street, New York.
25.	Abram C. Crosby, Rep., Delhi.

- | District. | Name, Politics and P. O. Address.                               |
|-----------|-----------------------------------------------------------------|
|           | 6. Eugene A. Curran, Dem., Rogers avenue, Flatbush.             |
|           | 17. George L. Danforth, Dem., Middleburgh.                      |
|           | 5. William B. Davenport, Dem., 174 Washington park, Brooklyn.   |
|           | 23. John C. Davies, Rep., Camden.                               |
|           | 31. George A. Davis, Rep., Lancaster.                           |
|           | 14. John A. Deady, Rep., 108 West 122d street, New York.        |
|           | 32. Benjamin S. Dean, Rep., 105 West Second street, Jamestown.  |
|           | 11. Robert E. Deyo, Dem., 106 West 48th street, New York.       |
|           | 16. William D. Dickey, Rep., 3 Bay View avenue, Newburgh.       |
|           | 29. Lockwood R. Doty, Rep., Geneseo.                            |
|           | 26. Henry R. Durfee, Rep., Palmyra.                             |
|           | 13. Eugene Durnin, Dem., 416 West 147th street, New York.       |
|           | 15. William T. Emmet, Dem., New Rochelle.                       |
|           | 4. William A. Faber, Rep., 15 Kingsland avenue, Brooklyn.       |
|           | 5. Thomas J. Farrell, Dem., 162 High street, Brooklyn.          |
|           | 15. Andrew C. Fields, Dem., Dobbs Ferry.                        |
|           | 8. Frank T. Fitzgerald, Dem., 52 Beach street, New York.        |
|           | 6. Thomas W. Fitzgerald, Dem., Port Richmond.                   |
|           | 1. Nicoll Floyd, Rep., Centre Moriches.                         |
|           | 28. Nathaniel Foote, Rep., 22 Meigs street, Rochester.          |
|           | 11. Francis Forbes, Dem., 8 West Fifty-sixth street, New York.  |
| D. at L.  | John M. Francis, Rep., 191 Second street, Troy.                 |
|           | 4. Andrew Frank, Rep., 547 Broadway, Brooklyn.                  |
| D. at L.  | Augustus Frank, Rep., Warsaw.                                   |
|           | 21. Frederick Fraser, Rep., Salem.                              |
|           | 25. Charles A. Fuller, Rep., Sherburne.                         |
|           | 32. Oscar A. Fuller, Rep., Wellsville.                          |
|           | 3. Solomon Galinger, Rep., 426 Monroe street, Brooklyn.         |
|           | 15. John Gibney, Dem., Sing Sing.                               |
|           | 8. Leonard A. Giegerich, Dem., 323 East 4th street, New York.   |
| D. at L.  | John I. Gilbert, Rep., Malone.                                  |
|           | 13. Thomas Gilleran, Dem., 120 West 59th street, New York.      |
|           | 9. Charles Goeller, Dem., 141 East 16th street, Syracuse.       |
| D. at L.  | William P. Goodelle, Rep., 900 James street, Syracuse.          |
|           | 13. Andrew H. Green, Dem., 91 Park avenue, New York.            |
|           | 13. Joseph I. Green, Dem., 1187 Lexington avenue, New York.     |
|           | 17. John A. Griswold, Dem., Catskill.                           |
|           | 26. Frank H. Hamlin, Rep., Canandaigua.                         |
|           | 27. Charles A. Hawley, Rep., Seneca Falls.                      |
|           | 4. Joseph C. Hecker, Rep., 105 Roebling street, Brooklyn.       |
|           | 16. Ira M. Hedges, Rep., Haverstraw.                            |
|           | 9. Aaron Herzberg, Dem., 331 Broome street, New York.           |
|           | 31. Henry W. Hill, Rep., 39 School street, Buffalo.             |
| D. at L.  | Michael H. Hirschberg, Rep., Grand avenue, Newburgh.            |
|           | 7. Wright Holcomb, Dem., 46 East 11th street, New York.         |
| D. at L.  | Frederick W. Holls, Rep., Yonkers.                              |
|           | 9. Henry D. Hotchkiss, Dem., 32 Nassau street, New York.        |
|           | 15. Adolph C. Hottenroth, Dem., 160 Alexander avenue, New York. |
|           | 3. Stephen B. Jacobs, Rep., 160 South Third street, Brooklyn.   |
|           | 2. Almet F. Jenks, Dem., 92 St. James place, Brooklyn.          |



- | District. | Name, Politics and P. O. Address.                               |
|-----------|-----------------------------------------------------------------|
|           | 29. I. Sam Johnson, Rep., Warsaw.                               |
| D. at L.  | Jesse Johnson, Rep., 308 Clinton avenue, Brooklyn.              |
|           | 4. Robert M. Johnston, Rep., 271 Leonard street, Brooklyn.      |
|           | 23. Abraham L. Kellogg, Rep., Oneonta.                          |
|           | 19. Dennis P. Kerwin, Dem., 43 Myrtle avenue, Albany.           |
|           | 19. William Kimmey, Dem., Becker's Corners.                     |
|           | 9. Joseph Koch, Dem., Sherwood House, New York.                 |
| D. at L.  | Edward Lauterbach, Rep., 2 East 78th street, New York.          |
|           | 20. Charles C. Lester, Rep., Saratoga Springs.                  |
|           | 24. Ceylon H. Lewis, Rep., 105 Furman street, Syracuse.         |
|           | 28. Merton E. Lewis, Rep., 837 East Main street, Rochester.     |
|           | 32. Charles Z. Lincoln, Rep., Little Valley.                    |
|           | 25. George F. Lyon, Rep., 235 Washington street, Binghamton.    |
|           | 1. Lucius N. Manley, Rep., 10 Pierson street, Long Island City. |
|           | 25. William J. Mantanye, Rep., Cortland.                        |
|           | 12. Jacob Marks, Dem., 213 East Seventy-first street, New York. |
|           | 24. Louis Marshall, Rep., 222 Cedar street, Syracuse.           |
|           | 17. Jacob M. Maybee, Dem., Livingston Manor.                    |
|           | 21. Thomas W. McArthur, Rep., Glens Falls.                      |
|           | 12. David McClure, Dem., 52 East 76th street, New York.         |
|           | 10. Delos McCurdy, Dem., Park Avenue Hotel, New York.           |
| D. at L.  | John T. McDonough, Rep., 21 Lake avenue, Albany.                |
|           | 22. John G. McIntyre, Rep., Potsdam.                            |
|           | 32. Louis McKinstry, Rep., Fredonia.                            |
|           | 21. Chester B. McLaughlin, Rep., Port Henry.                    |
|           | 10. James W. McLaughlin, Dem., 350 West 33d street, New York.   |
| D. at L.  | Daniel H. McMillan, Rep., 233 Pennsylvania street, Buffalo.     |
|           | 23. Charles S. Mereness, Rep., Lowville.                        |
|           | 2. John B. Meyenborg, Dem., 475 Ninth street, Brooklyn.         |
|           | 21. Charles H. Moore, Rep., Plattsburg.                         |
|           | 3. Charles B. Morton, Rep., 829 Monroe street, Brooklyn.        |
|           | 6. William M. Mullen, Dem., Stapleton, Long Island.             |
|           | 14. Michael J. Mulqueen, Dem., 38 West 115th street, New York.  |
|           | 27. William H. Nichols, Rep., Bath.                             |
|           | 7. De Lancey Nicoll, Dem., 123 East 38th street, New York.      |
|           | 26. John W. O'Brien, Rep., Auburn.                              |
|           | 9. Joseph M. Ohmeis, Dem., 114 Seventh street, New York.        |
|           | 15. William Church Osborne, Dem., Garrisons.                    |
|           | 29. Myron L. Parker, Rep., Lindonville.                         |
| D. at L.  | John F. Parkhurst, Rep., Bath.                                  |
|           | 18. Roswell A. Parmenter, Dem., 113 Second street, Troy.        |
|           | 18. Amos H. Peabody, Dem., New Lebanon.                         |
|           | 18. John Hudson Peck, Dem., 3 Irving place, Troy.               |
|           | 11. Charles L. Phipps, Rep., East Rockaway.                     |
|           | 11. M. Warley Platzek, Dem., 530 Fifth avenue, New York.        |
|           | 29. William Pool, Rep., Niagara street, Niagara Falls.          |
|           | 30. James S. Porter, Rep., 289 Cedar street, Buffalo.           |
|           | 3. Henry A. Powell, Rep., 570 Bedford avenue, Brooklyn.         |
|           | 27. Charles R. Pratt, Rep., 413 Lake street, Elmira.            |
|           | 28. James H. Redman, Rep., Hamlin.                              |
|           | 6. James W. Riggs, Dem., 257 South Third street, Brooklyn.      |

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- | District. | Name, Politics and P. O. Address.                             |
|-----------|---------------------------------------------------------------|
|           | 18. William J. Roche, Dem., 232 Third street, Troy.           |
|           | 6. George W. Roderick, Dem., Sheepshead Bay.                  |
|           | 19. Peter A. Rodgers, Dem., West Troy.                        |
| D. at L.  | Elihu Root, Rep., 25 East 69th street, New York.              |
|           | 18. Edwin C. Rowley, Dem., Union street, Hudson.              |
|           | 8. Elliot Sandford, Dem., 106 East 125th street, New York.    |
|           | 2. John G. Schumaker, Dem., 245 Joralemon street, Brooklyn.   |
|           | 12. Nelson Smith, Dem., 151 West 48th street, New York.       |
|           | 12. William McM. Speer, Dem., 224 West 59th street, New York. |
|           | 21. Edgar A. Spencer, Rep., 26 First avenue, Gloversville.    |
|           | 30. Philip W. Springweiler, Rep., 145 Monroe street, Buffalo. |
|           | 20. Abram B. Steele, Rep., Herkimer.                          |
|           | 22. William H. Steele, Rep., 162 East Second street, Oswego.  |
|           | 1. Frederick Storm, Rep., Bayside.                            |
|           | 5. William Sullivan, Dem., Pierrepont House.                  |
|           | 8. Morris Tekulsky, Dem., 39 Oak street, New York.            |
|           | 26. Frank E. Tibbetts, Rep., Ithaca.                          |
|           | 10. William Q. Titus, Dem., 235 East 30th street, New York.   |
|           | 2. Mirabeau Lamar Towns, Dem., 150 Quincey street, Brooklyn.  |
|           | 30. Herman F. Trapper, Labor, 21 Cypress street, Buffalo.     |
|           | 10. Charles H. Truax, Dem., 1992 Madison avenue, New York.    |
|           | 14. Chauncey S. Truax, Dem., 2034 Fifth avenue, New York.     |
|           | 10. Gideon J. Tucker, Dem., 203 East 14th street, New York.   |
|           | 30. William Turner, Rep., 420 Front avenue, Buffalo.          |
|           | 20. Walter L. Van Denberg, Rep., Amsterdam.                   |
| D. at L.  | Commodore P. Vedder, Rep., Ellicottville.                     |
|           | 5. William D. Veeder, Dem., 139 Pacific street, Brooklyn.     |
|           | 4. Frank H. Vogt, Rep., 969 Broadway, Brooklyn.               |
|           | 24. D. Gerry Wellington, Rep., Hamilton.                      |
|           | 20. Edward C. Whitmyer, Rep., 119 Front street, Schenectady.  |
|           | 16. Henry W. Wiggins, Rep., 12 Orchard street, Middletown.    |
|           | 7. Arthur D. Williams, Dem., 310 West 23d street, New York.   |
|           | 29. Nathan A. Woodward, Rep., Batavia.                        |

## OFFICERS OF THE CONVENTION.

### SECRETARY.

- | District. | Name and P. O. Address.                                      |
|-----------|--------------------------------------------------------------|
|           | 28. Charles E. Fitch, 32 South Washington street, Rochester. |

### ASSISTANT SECRETARIES.

- 23. Edward M. Johnson, Oneonta.
- 27. Marcus M. Cass, Jr., Watkins.
- 32. James C. Sheldon, Randolph.
- 28. Emmet W. Parkhill, 11 Scio street, Rochester.

### STENOGRAPHER.

- 31. H. J. Briggs, Buffalo.

### ASSISTANT STENOGRAPHER.

- 31. George H. Thornton, Buffalo.

## REVISED RECORD.

## SERGEANT-AT-ARMS.

District.      Name and P. O. Address.

20. William W. Bennett, Round Lake.

## ASSISTANT SERGEANT-AT-ARMS.

27. John McElroy, Hornellsville.

## LIBRARIAN.

19. E. L. Murlin, 107 South Swan street, Albany.

## ASSISTANT LIBRARIAN.

3. J. W. Jones, 570 Bedford avenue, Brooklyn.

## POSTMASTER.

18. J. S. Sanders, Grafton.

## CLERKS.

1. J. W. Titus, Glen Cove, L. I.
16. John J. Brown, Newburgh.
17. H. G. Getter, Middleburgh.
19. J. H. Rathbone, Albany.
21. J. P. Brennan, Plattsburgh.
22. E. A. Fay, Potsdam.
23. J. A. Cook, Vienna.
24. Ray B. Smith, 407 Kirk Block.
31. George B. Munn, 137 Glenwood avenue, Buffalo.

## PRESIDENT'S CLERK.

- C. A. de Gersdorff, 29 Nassau, New York.

## DOORKEEPERS.

William Henkel, 248 Avenue A, New York.

2. George D. Weeks, 481 Carleton avenue, Brooklyn.
15. Hiram Van Tassel, Garrisons.
26. Asa P. Fitch, Dundee.

## JANITOR.

19. George E. Smith, Albany.

## ASSISTANT JANITOR.

Thomas Brown, New York.

## MESSENGERS.

4. John Seaman, 47 Bushwick avenue, Brooklyn.
20. A. B. Crumb, West Winfield.
22. Joseph Fayel, Theresa.
24. Thomas G. A. Cheney, 514 Turtle street, Syracuse.
25. Edward M. Seacord, Cortland.
28. A. D. Taylor, Fairport.
29. W. T. Pool, Ransomville.
30. F. C. Loomis, 391 Myrtle avenue, Buffalo.
30. T. H. Rochford, 212 Clinton street, Buffalo.
- P. J. Haybyrne, 124 Monroe street, New York.

PAGES.

District.	Name and P. O. Address.
6.	John Gueron, Staten Island.
5.	William Ross, 561 Decatur street, Brooklyn.
19.	George Tiernan, 23 North Knox street.
21.	F. M. Moore, 21 Broad street, Plattsburg.
23.	F. J. Guernsey, Rome.
25.	S. F. Barager, Candor.
26.	C. Weddigan, Throopsville.
19.	William Logan, 235 South Pearl street.
19.	James H. Millard, corner Washington avenue and Swan street.
19.	Samuel Palmer, Albany.

PRESS REPRESENTATIVES.

Name.	Paper Represented.
George E. Graham,	Associated Press.
Hugh B. McLean,	Commercial Advertiser.
John W. Griffin,	Rochester Post-Express.
E. L. Murlin,	New York Tribune.
H. S. Cunningham,	Utica Morning Herald.
F. G. Mather,	Buffalo Express.
Edward G. Riggs,	The Sun.
William A. Hoy,	New York World.
R. H. Fuller,	Albany Journal.
Henry L. Stoddard,	New York Mail and Express.
Thomas Wallace,	Cohoes Evening Dispatch.
Hugh Hastings,	New York Times.
H. C. Gott,	Times-Union.
Frank Richter,	New York Staats Zeitung.
Harold W. Cole,	Albany Evening Post.
H. W. Smith,	Buffalo Commercial.
Edward S. Luther,	Albany Argus, New York Press and New York Morning Journal.

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President—Committee of Rules, chairman.	

## STANDING COMMITTEES.

### On Preamble and Bill of Rights:

Mr. Francis, Chairman, Rensselaer.	Mr. Bigelow, New York.
Mr. Alvord, Onondaga.	Mr. A. H. Green, New York.
Mr. Augustus Frank, Wyoming.	Mr. Tucker, New York.
Mr. Van Denberg, Montgomery.	Mr. Schumaker, Kings.
Mr. Woodward, Genesee.	Mr. Veeder, Kings.
Mr. Parker, Orleans.	

Clerk, H. A. Getter. Room, Assembly 2.

### On the Legislature — its Organization and the Number, Apportionment, Election, Tenure of Office and Compensation of its Members:

Mr. Becker, Chairman, Erie.	Mr. Schumaker, Kings.
Mr. Lincoln, Cattaraugus.	Mr. Crimmins, New York.
Mr. Acker, Steuben.	Mr. Giegerich, New York.
Mr. E. R. Brown, St. Lawrence.	Mr. Bush, Ulster.
Mr. Dickey, Orange.	Mr. Peck, Rensselaer.
Mr. Crosby, Delaware.	Mr. Osborn, Putnam.
Mr. Davies, Oneida.	Mr. Sullivan, Kings.
Mr. Root, New York.	Mr. Barrow, Onondaga.
Mr. Morton, Kings.	

Clerk, George B. Munn. Room, Assembly 3.



## On the Powers and Duties of the Legislature:

Mr. Vedder, Chairman, Cattaraugus.	Mr. Roche, Rensselaer.
Mr. Goodelle, Onondaga.	Mr. Rogers, Albany.
Mr. Wellington, Madison.	Mr. Maybee, Sullivan.
Mr. Barhite, Monroe.	Mr. Kimmey, Albany.
Mr. Dean, Chautauqua.	Mr. Mullen, Richmond.
Mr. Johnston, Kings.	Mr. Kerwin, Albany.
Mr. Mantanye, Cortland.	Mr. Hottenroth, New York.
Mr. Moore, Clinton.	
Mr. Parker, Orleans.	
Mr. E. A. Brown, Herkimer.	

Clerk, George B. Munn. Room, Assembly 3.

## On the Right of Suffrage:

Mr. Goodelle, Chairman, Onondaga.	Mr. Bigelow, New York.
Mr. Cookinham, Oneida.	Mr. Tucker, New York.
Mr. Parkhurst, Steuben.	Mr. McClure, New York.
Mr. Lauterbach, New York.	Mr. Nicoll, New York.
Mr. Hill, Erie.	Mr. Deady, New York.
Mr. Abbott, St. Lawrence.	Mr. Towns, Kings.
Mr. Wellington, Madison.	Mr. Cochran, Kings.
Mr. O'Brien, Cayuga.	
Mr. Wiggins, Orange.	
Mr. Alvord, Onondaga.	

Clerk, Ray B. Smith. Room, Assembly Parlor.

## On the Governor and other State Officers, their Election or Appointment, Tenure of Office, Compensation, Powers and Duties:

Mr. McMillan, Chairman, Erie.	Mr. McCurdy, New York.
Mr. Abbott, St. Lawrence.	Mr. Jenks, Kings.
Mr. Pool, Niagara.	Mr. Smith, New York.
Mr. O. A. Fuller, Allegany.	Mr. Tekulsky, New York.
Mr. Hamlin, Ontario.	Mr. Campbell, New York.
Mr. Mereness, Lewis.	Mr. Trapper, Erie.
Mr. Pratt, Chemung.	Mr. Marks, New York.
Mr. Manley, Queens.	
Mr. Vedder, Cattaraugus.	
Mr. Hedges, Rockland.	

Clerk, H. G. Getter. Room, Assembly Ways and Means.

## On the Judiciary:

Mr. Root, Chairman, New York.	Mr. C. H. Truax, New York.
Mr. Marshall, Onondaga.	Mr. Parmenter, Rensselaer.
Mr. Cookinham, Oneida.	Mr. Countryman, Albany.
Mr. Becker, Erie.	Mr. Bowers, New York.
Mr. Cady, Columbia.	Mr. Nicoll, New York.
Mr. Parkhurst, Steuben.	Mr. Jenks, Kings.
Mr. Gilbert, Franklin.	Mr. Bush, Ulster.
Mr. J. Johnson, Kings.	
Mr. McMillan, Erie.	
Mr. Foote, Monroe.	

Clerk, E. A. Fay. Room, Senate Library.

On the State Finances, Revenues, Expenditures and Taxation:

Mr. Acker, Chairman, Steuben.	Mr. F. T. Fitzgerald, New York.
Mr. Vedder, Cattaraugus.	Mr. Speer, New York.
Mr. I. Sam Johnson, Wyoming.	Mr. Smith, New York.
Mr. Cassidy, Schuyler.	Mr. Burr, New York.
Mr. A. B. Steele, Herkimer.	Mr. Mulqueen, New York.
Mr. Jacobs, Kings.	Mr. J. W. McLaughlin, New York.
Mr. O. A. Fuller, Allegany.	Mr. Blake, New York.
Mr. Tibbetts, Tompkins.	
Mr. Pratt, Chemung.	
Mr. Kellogg, Otsego.	

Clerk, J. H. Rathbone. Room, Court of Appeals Lawyers' Room.

On Cities, their Organization, Government and Powers:

Mr. J. Johnson, Chairman, Kings.	Mr. A. H. Green, New York.
Mr. Francis, Rensselaer.	Mr. Davenport, Kings.
Mr. Becker, Erie.	Mr. F. T. Fitzgerald, New York.
Mr. H. A. Clark, Tioga.	Mr. Hotchkiss, New York.
Mr. C. H. Lewis, Onondaga.	Mr. Speer, New York.
Mr. Holls, Westchester.	Mr. Rowley, Columbia.
Mr. M. E. Lewis, Monroe.	Mr. Banks, Albany.
Mr. Spencer, Fulton.	
Mr. Morton, Kings.	
Mr. Coleman, Erie.	

Clerk, Ray B. Smith. Room, Assembly Parlor.

On Canals:

Mr. Cady, Chairman, Columbia.	Mr. Danforth, Schoharie.
Mr. Porter, Erie.	Mr. Williams, New York.
Mr. Floyd, Suffolk.	Mr. Blake, New York.
Mr. Fraser, Washington.	Mr. Hottenroth, New York.
Mr. Baker, Oswego.	
Mr. Nichols, Steuben.	
Mr. G. W. Clark, Monroe.	

Clerk, John J. Brown. Room, Assembly 2.

On Railroads, Transportation and Electrical Transmission:

Mr. Davies, Chairman, Oneida.	Mr. McClure, New York.
Mr. McIntyre, St. Lawrence.	Mr. Hotchkiss, New York.
Mr. Cornwell, Yates.	Mr. Chipp, Ulster.
Mr. Dean, Chautauqua.	Mr. Koch, New York.
Mr. Johnston, Kings.	Mr. Holcomb, New York.
Mr. Baker, Oswego.	Mr. Herzberg, New York.
Mr. Storm, Queens.	Mr. Curran, Kings.
Mr. McArthur, Warren.	
Mr. Springweiler, Erie.	
Mr. Redman, Monroe.	

Clerk, J. A. Cook. Room. Assembly Library.

### On Counties, Towns and Villages, their Organization and Government :

Mr. C. B. McLaughlin, Chairm'n, Essex.	Mr. Maybee, Sullivan.
Mr. Floyd, Suffolk.	Mr. Kimmey, Albany.
Mr. Doty, Livingston.	Mr. Peabody, Columbia.
Mr. Mereness, Lewis.	Mr. Titus, New York.
Mr. Arnold, Dutchess.	Mr. Burr, New York.
Mr. Nichols, Steuben.	Mr. Herzberg, New York.
Mr. McKinstry, Chautauqua.	Mr. T. W. Fitzgerald, Richmond.
Mr. G. W. Clark, Monroe.	
Mr. Carter, Erie.	
Mr. C. A. Fuller, Chenango.	

Clerk, J. P. Brennan. Room, Assembly 4.

### On County, Town and Village Officers, other than Judicial, their Election or Appointment, Tenure of Office, Compensation, Powers and Duties :

Mr. Parkhurst, Chairman, Steuben.	Mr. Sullivan, Kings.
Mr. Lester, Saratoga.	Mr. Rogers, Albany.
Mr. Mantanye, Cortland.	Mr. Emmet, Westchester.
Mr. Moore, Clinton.	Mr. Ohmeis, New York.
Mr. Barnum, Otsego	Mr. Titus, New York.
Mr. Church, Allegany.	Mr. Kerwin, Albany.
Mr. Redman, Monroe.	Mr. Gilleran, New York.
Mr. Vogt, Kings.	
Mr. Jacobs, Kings.	
Mr. Hecker, Kings.	

Clerk, J. P. Brennan. Room, Assembly 5.

### On State Prisons and Penitentiaries and the Prevention and Punishment of Crime :

Mr. McDonough, Chairman, Albany.	Mr. Koch, New York.
Mr. Barhite, Monroe.	Mr. Rowley, Columbia.
Mr. Crosby, Delaware.	Mr. Campbell, New York.
Mr. O'Brien, Cayuga.	Mr. Meyenborg, Kings.
Mr. McArthur, Warren.	
Mr. Allaben, Kings.	
Mr. Andrew Frank, Kings.	

Clerk, H. G. Getter. Room, Assembly 7.

### On Corporations and Institutions not otherwise herein specified :

Mr. Hawley, Chairman, Seneca.	Mr. McCurdy, New York.
Mr. Dickey, Orange.	Mr. Veeder, Kings.
Mr. Barrow, Onondaga.	Mr. Banks, Albany.
Mr. H. A. Clark, Tioga.	Mr. Davenport, Kings.
Mr. W. H. Steele, Oswego.	Mr. Roche, Rensselaer.
Mr. Lyon, Broome.	Mr. Forbes, New York.
Mr. Storm, Queens.	Mr. Emmet, Westchester.
Mr. C. A. Fuller, Chenango.	
Mr. Van Denbergh, Montgomery.	
Mr. Doty, Livingston.	

Clerk, J. A. Cook. Room, Assembly Library.

On Currency, Banking and Insurance:

Mr. Augustus Frank, Chairman, Wyoming.	Mr. Sandford, New York.
Mr. Davis, Erie.	Mr. Fields, Westchester.
Mr. Whitmyer, Schenectady.	Mr. Durnin, New York.
Mr. M. E. Lewis, Monroe.	Mr. Riggs, Kings.
Mr. Phipps, Queens.	
Mr. Barnum, Otsego.	
Mr. Galinger, Kings.	

Clerk, J. W. Titus. Room, Assembly 1.

On the Militia and Military Affairs:

Mr. Hedges, Chairman, Rockland.	Mr. Gibney, Westchester.
Mr. Davis, Erie.	Mr. Cochran, Kings.
Mr. Ackerly, Suffolk.	Mr. Goeller, New York.
Mr. Galinger, Kings.	

Clerk, J. W. Titus. Room, Senate 1.

On Education and Funds Relating Thereto:

Mr. Holls, Chairman, Westchester.	Mr. Deyo, New York.
Mr. Durfee, Wayne.	Mr. Sandford, New York.
Mr. E. R. Brown, St. Lawrence.	Mr. Peck, Rensselaer.
Mr. Hirschberg, Orange.	Mr. C. S. Truax, New York.
Mr. Hill, Erie.	Mr. Platzek, New York.
Mr. McDonough, Albany.	Mr. Gilleran, New York.
Mr. McIntyre, St. Lawrence.	Mr. Towns, Kings.
Mr. Tibbetts, Tompkins.	
Mr. Cornwell, Yates.	
Mr. Fraser, Washington.	

Clerk, J. H. Rathbone. Room, Assembly 6.

On Charities and Charitable Institutions:

Mr. Lauterbach, Chairman, New York.	Mr. Giegerich, New York.
Mr. C. B. McLaughlin, Essex.	Mr. Danforth, Schoharie.
Mr. I. Sam Johnson, Wyoming.	Mr. Durnin, New York.
Mr. Cassidy, Schuyler.	Mr. C. S. Truax, New York.
Mr. A. B. Steele, Herkimer.	Mr. Forbes, New York.
Mr. Phipps, Queens.	Mr. Peabody, Columbia.
Mr. Powell, Kings.	Mr. Riggs, Kings.
Mr. Arnold, Dutchess.	
Mr. Manley, Queens.	
Mr. Kellogg, Otsego.	

Clerk, J. H. Rathbone. Room, Assembly 6.

## On Industrial Interests:

Mr. Gilbert, Chairman, Franklin.	Mr. C. H. Truax, New York.
Mr. M. E. Lewis, Monroe.	Mr. Crimmins, New York.
Mr. Barhite, Monroe.	Mr. Osborn, Putnam.
Mr. Wiggins, Orange.	Mr. Ohmeis, New York.
Mr. Coleman, Erie.	Mr. Trapper, Erie.
Mr. Faber, Kings.	Mr. Roderick, Kings.
Mr. Ackerly, Suffolk.	Mr. Goeller, New York.
Mr. Lester, Saratoga.	
Mr. Carter, Erie.	
Mr. Hecker, Kings.	

Clerk, C. H. Bassett. Room, Court of Appeals Room.

## On Salt Springs:

Mr. Alvord, Chairman, Onondaga.	Mr. Williams, New York.
Mr. Springweiler, Erie.	Mr. Mulqueen, New York.
Mr. Vogt, Kings.	Mr. Farrell, Kings.
Mr. Allaben, Kings.	

Clerk, George B. Munn. Room, Senate Room 5.

## On the Relations of the State to the Indians:

Mr. C. H. Lewis, Chairman, Onondaga.	Mr. Platzek, New York.
Mr. Porter, Erie.	Mr. J. I. Green, New York.
Mr. Church, Allegany.	Mr. Mullen, Richmond.
Mr. Turner, Erie.	

Clerk, J. W. Titus. Room, Senate 1.

## On Future Amendments and Revisions of the Constitution:

Mr. Marshall, Chairman, Onondaga.	Mr. Griswold, Greene.
Mr. Powell, Kings.	Mr. Parmenter, Rensselaer.
Mr. Spencer, Fulton.	Mr. Meyenborg, Kings.
Mr. Andrew Frank, Kings.	

Clerk, E. A. Fay. Room, Senate 6.

## On Revision and Engrossment:

Mr. Foote, Chairman, Monroe.	Mr. Holcomb, New York.
Mr. Hawley, Seneca.	Mr. Roderick, Kings.
Mr. W. H. Steele, Oswego.	Mr. Farrell, Kings.
Mr. Woodward, Genesee.	

Clerk, J. J. Brown. Room, Court of Appeals Lawyers' Room.

## On Privileges and Elections:

Mr. Hirschberg, Chairman, Orange.	Mr. Deady, New York.
Mr. Cookinham, Oneida.	Mr. Countryman, Albany.
Mr. Lester, Saratoga.	Mr. Chipp, Ulster.
Mr. Crosby, Delaware.	Mr. Gibney, Westchester.
Mr. Foote, Monroe.	
Mr. Lincoln, Cattaraugus.	
Mr. Durfee, Wayne.	

Clerk, J. A. Cook. Room, Senate 3.

On Printing:

Mr. Hamlin, Chairman, Ontario.	Mr. Marks, New York.
Mr. Pool, Niagara.	Mr. Fields, Westchester.
Mr. McKinstry, Chautauqua.	Mr. Beckwith, Erie.
Mr. Turner, Erie.	

Clerk, J. P. Brenan. Room, Senate 4.

On Contingent Expenses:

Mr. Lyon, Chairman, Broome.	Mr. J. I. Green, New York.
Mr. E. A. Brown, Herkimer.	Mr. Tekulsky, New York.
Mr. Whitmyer, Schenectady.	Mr. Curran, Kings.
Mr. Faber, Kings.	

Clerk, Ray B. Smith. Room, Senate Room 4.

On Rules:

The President, Chairman, New York.	Mr. Bowers, New York.
Mr. Root, New York.	Mr. Deyo, New York.
Mr. Acker, Steuben.	Mr. Griswold, Greene.
Mr. Davies, Oneida.	
Mr. McMillan, Erie.	

Clerk, E. A. Fay. Room, President's Room.

Select Committee on Civil Service:

Mr. Gilbert, Chairman, Franklin.	Mr. McCurdy, New York.
Mr. Francis, Rensselaer.	Mr. Countryman, Albany.
Mr. Hedges, Rockland.	Mr. Bigelow, New York.
Mr. Hill, Erie.	Mr. Osborn, Putnam.
Mr. Foote, Monroe.	
Mr. R. M. Johnston, Kings.	
Mr. Lincoln, Cattaraugus.	

Clerk, John J. Brown. Room, Court of Appeals Room.

RULES.

CHAPTER I.

POWERS AND DUTIES OF THE PRESIDENT AND VICE-PRESIDENTS.

Rule 1. The President shall take the chair each day at the hour to which the Convention shall have adjourned. He shall call to order, and, except in the absence of a quorum, shall proceed to business in the manner prescribed by these rules.

Rule 2. He shall possess the powers and perform the duties herein prescribed, viz.:

1. He shall preserve order and decorum, and, in debate, shall prevent personal reflections, and confine members to the question under discussion. When two or more members rise at the same time, he shall name the one entitled to the floor.

2. He shall decide all questions of order, subject to appeal to the Convention. On every appeal he shall have the right, in his place, to assign his reason for his decision. In case of such appeal no member shall speak more than once.

3. He shall appoint all committees, except where the Convention shall otherwise order.

4. He may substitute any member to perform the duties of the Chair during the absence or inability of both Vice-Presidents, but for no longer period than two consecutive legislative days, except by special consent of the Convention.

5. When the Convention shall be ready to go into Committee of the Whole, he shall name a chairman to preside therein, subject to right of committee to elect its own chairman.

6. He shall certify the passage of all amendments by the Convention, with the date thereof.

7. He shall designate the persons who shall act as reporters for the public press, not exceeding thirty in number; but no reporter shall be admitted to the floor who is not an authorized representative of a daily paper. Such reporters, so appointed, shall be entitled to such seats as the President shall designate, and shall have the right to pass to and fro from such seats in entering or leaving the Assembly Chamber. No reporter shall appear before any of the committees in advocacy of, or in opposition to, anything under consideration before such committees. A violation of this rule will be sufficient cause for the removal of such reporter. Removal for this cause shall be vested in the President.

8. He shall not be required to vote in ordinary proceedings, except where his vote would be decisive. In case of a tie vote the question shall be lost. He shall have general control, except as provided by rule or law, of the Assembly Chamber and of the corridors and passages in that part of the Capitol assigned to the use of the Convention. In case of any disturbance or disorderly conduct in the galleries, corridors or passages, he shall have the power to order the same to be cleared, and may cause any person guilty of such disturbance or disorderly conduct to be brought before the bar of the Convention. In all such cases the members present may take such measures as they shall deem necessary to prevent a repetition of such misconduct, either by the infliction of censure or pecuniary penalty, as they may deem best, on the parties thus offending.

9. He shall also be *ex-officio* member and chairman of the Committee on Rules.

10. In the absence of the President, or his inability to preside, his duties shall devolve upon the First Vice-President, or, if he also be absent, upon the Second Vice-President.

## CHAPTER II.

### ORDER OF BUSINESS.

Rule 3. The first business of each day's session shall be the reading of the Journal of the preceding day, and the correction of any errors that may be found to exist therein. Immediately thereafter, except on days and at times set apart for the consideration of special orders, the order of business shall be as follows:

1. Presentation of memorials. Under which head shall be included petitions, remonstrances and communications from individuals, and from public bodies.

2. Communications from the Governor and other State officers.\* Under this head shall be embraced also communications from public officers and from corporations in response to calls for information.

3. Notices, motions and resolutions, to be called for by districts numerically.

4. Propositions for constitutional amendment, by districts in numerical order.

5. Reports of standing committees in the order stated in rule 15.

6. Reports of select committees.

7. Third reading of proposed constitutional amendments.

8. Unfinished business of general orders.

9. Special orders.

10. General orders.

Reports from Committee on Revision and Engrossment may be received under any order of business.

## CHAPTER III.

### RIGHTS AND DUTIES OF MEMBERS.

Rule 4. Petitions, memorials, remonstrances and any other papers addressed to the Convention shall be presented by the President, or by any member in his place, read by their titles, unless otherwise ordered and referred to the proper committee.

Rule 5. Every member presenting a paper shall indorse the same; if a petition, memorial, remonstrance or communication in answer to a call for information, with a concise statement of its subject, and his name; if a notice or resolution, with his name; if a proposition for constitutional amendment, with a statement of its title and his name; if a proposition of any other kind for the



consideration of the Convention, with a statement of its subject, the proposer's name, and the reference, if any, desired. A report of a committee must be indorsed with a statement of such report, together with the name of the committee making the same, and shall be signed by the chairman. A report by a minority of any committee shall be signed by the members rendering the same.

Rule 6. Every member who shall be within the bar of the Convention when a question is stated from the chair, shall vote thereon, unless he be excused by the Convention, or unless he be directly interested in the question; nor shall the roll of absentees be more than once called. The bar of the Convention shall be deemed to include the body of the Convention chamber.

Rule 7. Any member requesting to be excused from voting may make, when his name is called, a brief statement of the reasons for making such request, not exceeding three minutes in time, and the Convention, without debate, shall decide if it will grant such request; but nothing in this rule contained shall abridge the right of any member to record his vote on any question previous to the announcement of the result.

#### CHAPTER IV.

##### ORDER AND DECORUM.

Rule 8. No member rising to debate, to give a notice, make a motion, or present a paper of any kind, shall proceed until he shall have addressed the President and been recognized by him as entitled to the floor. While the President is putting a question or a count is being had, no member shall speak or leave his place; and while a member is speaking no member shall entertain any private discourse or pass between him and the Chair.

Rule 9. When a motion to adjourn, or for a recess, shall be carried, no member or officer shall leave his place till the adjournment or recess shall be declared by the President.

Rule 10. No persons, except members of the Convention and the officers thereof shall be permitted within the Secretary's desk or the rooms set apart for the use of the Secretary during the session of the Convention, and no member or other person shall visit or remain by the Secretary's table while the yeas and nays are being called, except officers of the Convention in the discharge of their duties.

#### CHAPTER V.

##### ORDER AND DEBATE.

Rule 11. No member shall speak more than once on the same question until every member desiring to speak on such question

shall have spoken; nor more than twice on any question without leave of the Convention.

Rule 12. If any member, in speaking, transgress the rules of the Convention, the President shall, or any member may, call to order, in which case the member so called to order shall immediately sit down, and shall not rise, unless to explain or proceed in order.

Rule 13. All questions relating to the priority of one question or subject-matter over another, under the same order of business, the postponement of any special order, or the suspension of any rule, shall be decided without debate.

Rule 14. All questions of order, as they shall occur, with the decisions thereon, shall be entered in the Journal, and at the close of the day's session a statement of all such questions and decisions shall be printed at the close of and as an appendix to the Journal.

## CHAPTER VI.

### COMMITTEES AND THEIR DUTIES.

Rule 15. The President shall appoint the following standing committees to report upon the subjects named, and such others as may be referred to them, viz.:

1. On the preamble and the bill of rights, to consist of eleven members.

2. On the Legislature, its organization and the number, apportionment, election, tenure of office and compensation of its members, to consist of seventeen members.

3. On the powers and duties of the Legislature, except as to matters otherwise referred, to consist of seventeen members.

4. On the right of suffrage and the qualifications to hold office, to consist of seventeen members.

5. On the Governor and other State officers, their election or appointment, tenure of office, compensation, powers and duties, except as otherwise referred, to consist of seventeen members.

6. On the judiciary, to consist of seventeen members.

7. On the State finances, revenues, expenditures and taxation, and restrictions on the powers of the Legislature in respect thereto, and to public indebtedness, to consist of seventeen members.

8. On cities, their organization, government and powers, to consist of seventeen members.

9. On canals, to consist of eleven members.

10. On railroads, transportation and electrical transmission, to consist of seventeen members.

11. On counties, towns and villages, their organization, government and powers, to consist of seventeen members.

12. On county, town and village officers, other than judicial, their election or appointment, tenure of office, compensation, powers and duties, to consist of seventeen members.

13. On State prisons and penitentiaries, and the prevention and punishment of crime, to consist of eleven members.

14. On corporations and institutions, not otherwise herein specified, to consist of seventeen members.

15. On currency, banking and insurance, to consist of eleven members.

16. On the militia and military officers, to consist of seven members.

17. On education and the funds relating thereto, to consist of seventeen members.

18. On charities and charitable institutions, to consist of seventeen members.

19. On industrial interests, except those already referred, to consist of seventeen members.

20. On the salt springs of the State, to consist of seven members.

21. On the relations of the State to the Indians residing therein, to consist of seven members.

22. On future amendments and revisions of the Constitution, to consist of seven members.

23. Revision and engrossment, to consist of seven members.

24. Privileges and elections, to consist of eleven members.

25. Printing, to consist of seven members.

26. Contingent expenses, to consist of seven members.

27. Rules, to consist of seven members and the President.

Rule 16. The several committees shall consider and report without unnecessary delay, upon the respective matters referred to them by the Convention.

Rule 17. The Committee on Revision and Engrossment shall examine and correct the constitutional amendments which are referred to it, for the purpose of avoiding inaccuracies, repetitions and inconsistencies. It shall also carefully examine in the order in which they shall be directed by the Convention to be engrossed for a third reading, all constitutional amendments so engrossed and see that the same are correctly engrossed, and shall immediately report the same in like order to the Convention before they are read the third time.

Rule 18. It shall be the duty of the Committee on Printing to examine and report on all questions of printing referred to them;

to examine from time to time, and ascertain whether the prices charged for printing, and the quantities and qualities furnished are in conformity to the orders of the Convention and to the conditions fixed by it; to ascertain and report the number of copies to be printed, and how distributed; and to report to the Convention from time to time any measures they may deem useful for the economical and proper management of the Convention printing.

Rule 19. It shall be the duty of the Committee on Contingent Expenses to inquire into the expenditures of the Convention, and whether the same are being or have been made in conformity to law and the orders of the Convention, and whether proper vouchers exist for the same, and whether the funds provided for the purpose are economically applied, and to report, from time to time, such regulations as may conduce to economy and secure the faithful disbursement of the moneys appropriated by law.

## CHAPTER VII.

### GENERAL ORDERS AND SPECIAL ORDERS.

Rule 20. The matters referred to the Committee of the Whole Convention shall constitute the general orders, and their titles shall be recorded in a calendar kept for that purpose by the Secretary, in the order in which they shall be severally referred.

Rule 21. The business of the general orders shall be taken up in the following manner, viz.: The Secretary shall announce the title of each proposed amendment or other matter, as it shall be reached in its order; whereupon it shall be taken up on the call of any member, without the putting of a question therefor, but if not so moved, it shall lose its precedence for the day. And whenever three proposed amendments or other matters have been thus moved the Convention shall go into Committee of the Whole upon them without further order.

Rule 22. Tuesday and Thursday of each week shall be set apart especially for the consideration of the general orders; but they may be considered on any other day when reached in their order.

Rule 23. Each member shall be furnished daily with a printed list of the general orders, which shall be kept on his file by the Sergeant-at-Arms, in the same manner as other printed documents.

Rule 24. Any matter may be made a special order for any particular day, by the acceptance of the report of the Committee on Rules, or by a two-thirds vote, or by unanimous consent.

## CHAPTER VIII.

## COMMITTEE OF THE WHOLE.

Rule 25. Any matter may be committed to the Committee of the Whole upon the report of a standing or select committee, or by unanimous consent at any time. Any committee may be discharged from the further consideration of any matter referred to it, and such matter may then be referred to the Committee of the Whole, by a vote of the Convention. The same rules shall be observed in Committee of the Whole as in the Convention, so far as the same are applicable, except that the previous question shall not apply, nor the yeas and nays be taken; nor a limit be made as to the number of times of speaking.

Rule 26. A motion to "rise and report progress" shall be in order at any stage, and shall be decided without debate. A motion to rise and report is not in order until each section and the title have been considered, unless the limit of time has expired.

Rule 27. Proposed constitutional amendments and other matters shall be considered in Committee of the Whole in the following manner, viz.: They shall be first read through, if the committee so direct; otherwise they shall be read and considered by sections. When the limit of time has expired, the amendments which have been proposed and not previously acted upon shall be voted upon in their order without further debate. The proposed constitutional amendment, as amended, shall then be voted upon without debate, and the committee shall then rise and report in accordance with the action which it has taken.

If the committee shall have adopted any proposed constitutional amendment, the same shall be reported complete with any amendments made in committee incorporated in their proper places.

Rule 28. If, at any time, when in Committee of the Whole, it be ascertained that there is no quorum, the chairman shall immediately report the fact to the President, who then takes the chair for the purpose of securing a quorum, and when that is obtained the chairman resumes his duties.

Rule 29. Should the committee not have completed the business before it rises, the chairman will report progress and ask leave to sit again. If leave be refused, the effect is to bring up the subject immediately before the Convention.

## CHAPTER IX.

## PROPOSED AMENDMENTS TO THE CONSTITUTION.

Rule 30. No proposition for constitutional amendment shall be introduced in the Convention, except in one of the following modes:

1. Under the order of introduction of propositions for constitutional amendment by districts in numerical order.

2. By report of a committee.

Rule 31. The title of each proposition for constitutional amendment introduced shall state concisely its subject-matter.

Rule 32. All propositions for constitutional amendment, after their second reading, which shall be by title, shall be referred to a standing or select committee to consider and report thereon, and shall be immediately printed and placed on the files of each member. All proposed constitutional amendments reported shall, if the report be agreed to, be committed to the Committee of the Whole and immediately printed. When a committee has reported that no amendment should be made to the provisions of the existing Constitution relating to any specified subject and such report is agreed to, all propositions for constitutional amendment relating to that subject which have been referred to that committee shall be considered as rejected. All constitutional amendments proposed by a minority report from any committee shall be printed and placed on the files of the members of the Convention.

Rule 33. Proposed constitutional amendments reported by the Committee of the Whole shall be subject to debate before the question to agree with the committee in their report is put.

Rule 34. No proposed constitutional amendment shall be ordered to a third reading until it shall have been considered in Committee of the Whole.

Rule 35. No proposed constitutional amendment shall be put upon its third reading until it shall have been reported by the Committee on Revision and Engrossment as correctly revised and engrossed, unless by unanimous consent. Nor shall any proposed constitutional amendment be read the third time, unless it shall have been once printed.

Rule 36. Every proposed constitutional amendment shall receive three separate readings previous to its final passage, and the third reading shall be on a day subsequent to that on which the proposed constitutional amendment passed in Committee of the Whole.

Rule 37. The third reading of proposed constitutional amendments shall take place in the order in which they have been ordered to a third reading, unless the Convention, by a vote of two-thirds of the members present, direct otherwise, or the proposed constitutional amendment to be read is laid on the table. And the question on the final passage of every proposed constitutional amendment shall be taken immediately after such third reading, and without debate, but the vote on the final passage of every proposed amend-

ment, revision or addition to the Constitution shall be taken by ayes and nays, which shall be entered on the Journal.

Rule 38. In all cases where unanimous consent is asked for advancing a proposed constitutional amendment out of its order, it shall be the duty of the President to plainly announce such request in full twice.

Rule 39. On the third reading of a proposed constitutional amendment after the reading of the title and before the reading of the text, the proposed constitutional amendment shall be open one hour, if required, for debate on its merits, before the previous question shall be ordered; but no member shall speak more than five minutes or more than once; the vote, however, may be taken at any time when the debate is closed.

Rule 40. On the third reading of the proposed constitutional amendment no amendment thereto shall be in order, except to fill blanks, without unanimous consent.

Rule 41. A motion may be made during the third reading of any proposed constitutional amendment to recommit it, and such motion shall not be debatable.

Rule 42. A register shall be kept by the Secretary of all proposed constitutional amendments introduced in the Convention, in which shall be recorded under appropriate heads, the progress of such proposed constitutional amendments from the date of their introduction to the time of their final disposition.

Rule 43. In all cases where a proposed constitutional amendment, order, motion or resolution shall be entered on the Journal, the name of the member introducing or moving the same shall also be entered on the Journal.

## CHAPTER X.

### MOTIONS AND THEIR PRECEDENCE.

Rule 44. When a question is under consideration, the following motions only shall be received, which motions shall have precedence in the order stated, viz.:

Motions to, or for:

- |                                                         |                               |
|---------------------------------------------------------|-------------------------------|
| 1. Adjourn for the day.                                 | ) Not amendable or debatable. |
| 2. Recess.                                              |                               |
| 3. Call of the Convention.                              |                               |
| 4. Previous question.                                   |                               |
| 5. Lay on the table.                                    |                               |
| 6. Postpone indefinitely, not amendable, but debatable. |                               |

- |                                      |                                         |
|--------------------------------------|-----------------------------------------|
| 7. Postpone to a certain day.        | } Preclude debates on<br>main question. |
| 8. Go into Committee of the Whole.   |                                         |
| 9. Commit to Committee of the Whole. |                                         |
| 10. Commit to a standing committee.  |                                         |
| 11. Commit to a select committee.    |                                         |
| 12. Amend.                           |                                         |

Rule 45. Every motion or resolution shall be stated by the President or read by the Secretary before debate, and again, if requested by any member, immediately before putting the question; and every motion, except those specified in subdivisions one to eleven, inclusive, of rule 44, shall be reduced to writing if the President or any member request it.

Rule 46. After a motion shall be stated by the President, it shall be deemed in the possession of the Convention, but may be withdrawn at any time before it shall be decided or amended.

Rule 47. The motion to adjourn, to take a recess, and to adjourn for a longer period than one day, shall always be in order; but the latter motion shall not preclude debate.

Rule 48. A motion to reconsider any vote must be made on the same day on which the vote proposed to be reconsidered was taken, or on the legislative day next succeeding, and by a member who voted in the majority, except to reconsider a vote on the final passage of a proposed constitutional amendment, which shall be privileged to any member. Such motion may be made under any order of business, but shall be considered only under the order of business in which the vote proposed to be reconsidered occurred. When a motion for reconsideration is decided, that decision shall not be reconsidered, and no question shall be twice reconsidered; nor shall any vote be reconsidered upon either of the following motions:

- |                      |                            |
|----------------------|----------------------------|
| To adjourn           | To take from the table; or |
| To lay on the table. | For the previous question. |

Rule 49. No amendment to a motion shall be received while another is pending, unless it be an amendment to the amendment and germane to the subject.

## CHAPTER XI.

### OF RESOLUTIONS.

Rule 50. The following classes of resolutions shall lie over one day for consideration, after which they may be called up, as of course, under their appropriate order of business.



1. Resolutions giving rise to debate, except such as shall relate to the disposition of business immediately before the Convention, to the business of the day on which they may be offered, or to adjournments or recesses, shall lie over one day for consideration, after which they may be called up, as, of course, under their appropriate order of business.

2. Resolutions containing calls for information from any of the executive departments, from State, county or municipal officers or from any corporate bodies, shall be referred to the appropriate committee. Such committee shall report thereon within three legislative days.

Rule 51. All resolutions for the printing of an extra number of documents shall be referred, as, of course, to the standing Committee on Printing, for their report thereon before final action by the Convention.

Rule 52. All resolutions authorizing or contemplating expenditures for the purposes of the Convention shall be referred to the standing Committee on Contingent Expenses for their report thereon before final action by the Convention.

## CHAPTER XII.

### THE PREVIOUS QUESTION.

Rule 53. The "previous question" shall be put as follows: "Shall the main question now be put?" and, until it is decided, shall preclude all amendments or debate. When, on taking the previous question, the Convention shall decide that the main question shall not now be put, the main question shall be considered as still remaining under debate. The "main question" shall be on the passage of the proposed amendment to the Constitution, resolution or other matter under consideration, but when amendments thereto are pending, the question shall first be taken upon such amendments in their order, and when adopted in Committee of the Whole, and not acted on in the Convention, the question shall be taken upon such amendments in like order.

## CHAPTER XIII.

### THE CONVENTION CHAMBER AND THE PRIVILEGES OF ADMISSION TO THE FLOOR.

Rule 54. The following classes of persons, besides officers and members of the Convention, shall be entitled to admission to the floor of the Convention, during the session thereof, viz.:

1. Governor, Lieutenant-Governor and ex-Governors of the State.

2. Judges of the Court of Appeals and of the Supreme Court.
3. The members of the Senate and Assembly and ex-Speakers.
4. The State officers, deputies and commissioners.
5. The Regents of the University.
6. United States Senators and Congressmen.
7. The Capitol Commissioners.
8. Persons in the exercise of an official duty directly connected with the business of the Convention.
9. The reporters for the press, as provided by subdivision 7 of rule 2.

No other person shall be admitted to the floor during the session, except upon the permission of the President or by vote of the Convention; and persons so admitted shall be allowed to occupy places only in the seats in the rear of the Assembly Chamber. All permits granted by the President may be revoked by him at pleasure, or upon the order of the Convention. No person shall be entitled to the privileges of the floor of the Convention as a legislative reporter of a newspaper who is interested in pending or contemplated constitutional revision, or who is employed by, or receives compensation from, any corporation, except a newspaper, news or press association. The doors of the Convention shall be kept open to the public during all its sessions.

## CHAPTER XIV.

### GENERAL RULES.

Rule 55. Equivalent motions, resolutions or amendments thereto shall not be entertained. If any question contains several distinct propositions, it shall be divided by the Chair at the request of any member, but a motion to "strike out and insert" shall be indivisible.

Rule 56. All proposed action touching the rules and orders of business shall be referred, as, of course, to the Committee on Rules; such committee may sit during the session of the Convention without special leave, and report at any time on the rules or order of business so referred to them. It will be in order to call up for consideration at any time a report from the Committee on Rules. Any member may object to its consideration until the next legislative day, and, if sustained by twenty-four other members, the consideration shall be so postponed, but only once. Pending the final consideration thereof, but one motion, except by unanimous consent, that the Convention adjourn, may be entertained, and no other dilatory motion shall be entertained until such report is fully disposed of. A motion to suspend the rules shall in all cases state specifically the object of the suspension, and every case of suspension

of a rule under such notice and motion shall be held to apply only to the object specified therein. Provided that when ordered so to do by the Convention a standing committee shall make a report on a constitutional amendment or other subject, the Committee on Rules shall report a rule limiting the time for debate; and upon such report no member shall speak more than once nor more than five minutes. Such report shall stand as the time limited for debate on the subject-matter referred to in such rule, and the previous question or other motion to close debate shall not be in order until the expiration of the time so allotted, or the debate has been closed; the time thus allotted for debate shall be equally divided between those in favor and those opposed to the subject-matter under consideration. All questions or motions authorized by this rule shall be decided at once without delay or debate, except as herein expressly allowed.

Rule 57. The yeas and nays may be taken on any question whenever so required by any fifteen members (unless a division by yeas and nays be already pending), and when so taken shall be entered on the Journal.

Rule 58. When the Convention shall be equally divided on any question, including the President's vote, the question shall be deemed to be lost.

Rule 59. In considering the report of the Committee on Revision and Engrossment, each article shall be open to amendment germane to such changes as may have been reported by the committee, without previous notice, but no one shall speak more than five minutes, or more than once, on any proposition to amend.

Rule 60. When a blank is to be filled and different sums or times shall be proposed, the question shall be first taken on the highest sum and the longest time.

Rule 61. A majority of the Convention shall constitute a quorum. In all cases of the absence of members during its sessions, the members present may take such measures as they shall deem necessary to secure the presence of absentees, and may inflict such censure or pecuniary penalty as they may deem just on those who, on being called on for that purpose, shall not render sufficient excuse for their absence. No constitutional amendment shall be adopted, unless by the assent of a majority of all the members elected to the Convention.

Rule 62. For the purpose of securing the attendance of members, a call of the Convention may be made, but such call shall not be in order after the main question has been ordered, nor after the

voting on any question has commenced, nor after the third reading of an amendment has been completed.

Rule 63. When less than a quorum vote on any subject under consideration by the Convention, it shall be in order, on motion, to close the bar of the Convention, whereupon the roll of members shall be called by the Secretary, and, if it is ascertained that a quorum is present, either by answering to their names or by their presence in the Convention, the yeas and nays shall again be ordered by the President, and, if any member present refuses to vote, such refusal shall be deemed a contempt, and member or members so offending shall be cited before the Committee on Privileges and Elections, which, after inquiry, shall report to the Convention for such action as the facts shall seem to warrant, and, unless purged, the Convention may order the Sergeant-at-Arms to remove said member or members without the bar of the Convention, and all privileges of membership shall be refused the person or persons so offending until the contempt be duly purged.

Rule 64. Whenever any person shall be brought before the bar of the Convention for adjudged breach of its privileges, no debate shall be in order, but the President shall proceed to execute the judgment of the Convention without delay or debate.

Rule 65. It shall be the duty of the Secretary to keep the Journal of each day's proceedings, which shall be printed and laid on the table of members on the morning after its approval. In addition to his other duties he shall prepare and supervise the printing of the calendars of the orders of the day and cause them to be placed on the files before the beginning of each day's session. All appointments of officers and employes shall be entered on the Journal of the Convention, with the date of appointment.

Rule 66. It shall be the duty of the stenographer of the Convention to be present at every session of the Convention. He shall take stenographic notes of the debates in the Convention and in Committee of the Whole, and shall at each day's session of the Convention furnish a copy of the debates of the day before written out in long-hand, and file the same with the Secretary, who shall keep the same in his office, and the same shall at all times be open to the inspection of delegates.

Rule 67. At a reasonable time, to be determined by the Convention, and at least five days before final adjournment, the Committee on Revision and Engrossment shall be instructed to accurately enroll and engross the present State Constitution, with all amendments thereto properly inserted, or the proposed new Constitution; and the same shall be reported by said committee to the Convention,

read through therein, and submitted to a final vote prior to its final adjournment. When an article of the Constitution is amended, or a new article substituted or added, such amended article, or new article, shall be enrolled and engrossed entire in its proper place in the Constitution.

## CHAPTER XV.

### MISCELLANEOUS PROVISIONS.

Rule 68. The Sergeant-at-Arms shall, under the direction of the Committee on Printing, receive from the printer all matter printed for the use of the Convention, and keep a record of the time of the reception of each document, and the number of copies received, and cause a copy of each to be placed on the desk of each member immediately after their reception by him. Subject to the direction of the President, he shall enforce the rules of the Convention.

Rule 69. Separate files of the daily Journal, reports of committees and of all documents ordered to be printed shall be prepared and kept by the Sergeant-at-Arms, and one copy shall be placed upon the desk of each member of the Convention and of the Secretary.

Rule 70. There shall be printed, as, of course, and without any special order, 1,000 copies of the Journal and of all reports of committees on the subject of constitutional revision.

Rule 71. Six hundred copies of the Journal and 600 copies of the reports as printed shall be bound and distributed as follows, viz.: To each member of the Convention, two copies; State Library, five copies; the library of the Senate, five copies; the library of the Assembly, five copies; the office of each county clerk, one copy; and the remaining copies to such libraries and other institutions as shall be designated by the President or by the Convention.

Rule 72. The officers of the Convention appointed by the President shall perform such duties as he may prescribe, and for any breach of duty any such officer may be removed and his successor appointed by the President. The officers of the Convention appointed by the Secretary shall perform such duties as he may prescribe, and for any breach of duty any such officers may be removed and his successor be appointed by the Secretary.

## DOCUMENT NO. 17.

(In Response to Resolution 47, Vol. 1, Page 242.)

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BRIEF OF THE CONTESTEES IN THIRTIETH SENATE  
DISTRICT CONTEST.

In the Matter of the Contest of Harvey W. Putnam and Thomas A. Sullivan, for Seats in the Convention now Occupied by Herman F. Trapper and Charles Beckwith, from Thirtieth Senatorial District.

In addition to the oral argument made before the committee, the counsel for Charles Beckwith, one of the sitting delegates, wish to present the following considerations in his behalf:

The rule of law applicable to the case, as the same is laid down by the Court of Appeals in *People v. Thacher* (55 N. Y., 525), cited by the contestant's counsel, is that the election return is *prima facie* evidence of election to public office, but the return is open to inquiry, and will be corrected or set aside, if erroneous, and will not be received, if proved to be so uncertain and unreliable that its value as evidence is destroyed and justice requires its rejection. The rule governing legislative bodies in their inquiries in similar cases is the same. (American and English Encyclopedia of Law, Title, Elections.) Upon an examination of the authorities it will be found that the cases in which the election returns have been disregarded fall within one of the three following cases:

First. Where the return is erroneous in that it does not correctly state the result of the election, as where the ballots were not properly counted, or their number was not properly returned.

Second. Where some mandatory provision of the statute has been disregarded by the election officers, and the result of the election was affected thereby.

Third. Where fraudulent votes were cast or the circumstances were such that fraudulent votes could have been cast, and it is probable that they were cast; and where lawful voters were not allowed to vote or were intimidated and did not vote.

In what we have to say, we shall assume that the committee is familiar with the testimony and facts proved, and we shall confine our remarks to the election in the fourth district of the First Ward.

The case at bar does not fall within the first of these classes of cases, because the testimony of all the witnesses is that the ballots were honestly counted and returned.

The case does not fall within the second class mentioned, because no mandatory provision of the statute was disregarded by the election officers, whereby the result of the election was affected. We concede that one important part of the election law was violated by the election officers, and that is the provision that no person shall go with the voter into the booth where the tickets were folded, unless the voter is blind, etc. The bald fact that there was some person in these booths who aided in folding ballots for a considerable time while the voting was going on, is shown. The question arises whether that fact is sufficient to justify the committee in rejecting the election return and thereby disfranchising all the voters of the district. Hundreds of persons went into the booth where this person was, and came out and voted; not one of them says that the intruder spoke to him or did anything further than fold the ballots. If anything further was done, if any voter was intimidated or was solicited to vote a particular ballot, it would be a matter easily proved. There are many earnest and fearless Republicans in the election district where the law was thus violated, and not one of them complains that he was interfered with. Counsel for the contestants has contented himself with a wholesale denunciation of the act. Instead of calling voters of the district to show that the result of the election was affected by this infringement of the statute, he has contented himself with swearing a large number of lawyers who went there to see the fun, and the reporters who went there to write it up. It is not sufficient to show a violation of the law, to bring the case within the second clause mentioned; it is necessary to show in addition that the violation of the law affected the result of the election. We assert that this is the only instance where it is shown that the mandatory provisions of the statute were violated. We challenge counsel to point to another instance. Irregularities he may show, as the failure to swear in the temporary chairman of the board of inspectors, or the failure to require the voter challenged to sign and swear to a certain statement of his qualifications, but no violation of the mandatory provision of the law that in a vital way touched or could touch the result of the election can be shown.

We have no desire to palliate the offense of the election officers in permitting men to accompany the voters into the secret compartment; but we contend that this single violation of the law, standing by itself, is not sufficient to annul the election return without testimony showing that it influenced the casting at least of some votes.

The case is not within the third class mentioned, because it is not shown that fraudulent votes were cast, or that the circumstances were such that it is likely fraudulent votes were cast; or that lawful

votes were rejected. This proposition brings up for review a great mass of testimony that must be hastily passed over.

Complaint is made of the colonization of voters. We leave this complaint with the assertion that it is proper and lawful for an elector to remove from one election district to another for the sole and avowed purpose of acquiring the right to vote in the latter district. The law permits it, and those who would condemn it should endeavor to procure a change of the law by legislative enactment. It is not shown that any so-called "colonist" was not a lawful voter in the district where he voted.

A conspiracy on the part of the Democrats is charged by contestant's counsel. When analyzed, this charge is absurd. It is admitted that the only contest in the election district under investigation was over the office of alderman. There is no suggestion, and there never has been, that there was any excitement or fraudulent practices in any of the 150 election districts of the city of Buffalo, outside of those in the ward where this contest over the aldermanic office was going on. And yet, it is seriously charged that the Lieutenant-Governor of the State, the Assistant Superintendent of Public Works of the State, the sheriff of the county, the police commissioners of the city, and the members of the local Democratic organization, and other Democrats of honor and integrity entered into a conspiracy which had for its object simply the election of an alderman, and that to accomplish their purpose, they stopped a little short of murder. The charge of conspiracy is the main contention of the contestants, indeed they are forced to take that position, otherwise there is no force in much of the testimony they offer.

The instruments to carry out the conspiracy, they say, were the police officers and the deputy sheriffs. When justice is done and men judge impartially of the events connected with this aldermanic contest it will be declared that the action of the sheriffs, in appointing a large number of deputies, and the action of the police commissioners in sending a strong force into the ward where the contest was going on, were measures of great prudence and sagacity. The people there were ripe for a riot. The excitement of the campaign had been terrific, and acts of violence were expected on election day. Another such a scene as was witnessed in Troy as its last municipal election might have been enacted, but the peace officers held the reins of power in this fourth district of the First Ward in the city of Buffalo, on last election day, and no man was molested or interfered with by any person except the officers of the law.



of a rule under such notice and motion shall be held to apply only to the object specified therein. Provided that when ordered so to do by the Convention a standing committee shall make a report on a constitutional amendment or other subject, the Committee on Rules shall report a rule limiting the time for debate; and upon such report no member shall speak more than once nor more than five minutes. Such report shall stand as the time limited for debate on the subject-matter referred to in such rule, and the previous question or other motion to close debate shall not be in order until the expiration of the time so allotted, or the debate has been closed; the time thus allotted for debate shall be equally divided between those in favor and those opposed to the subject-matter under consideration. All questions or motions authorized by this rule shall be decided at once without delay or debate, except as herein expressly allowed.

Rule 57. The yeas and nays may be taken on any question whenever so required by any fifteen members (unless a division by yeas and nays be already pending), and when so taken shall be entered on the Journal.

Rule 58. When the Convention shall be equally divided on any question, including the President's vote, the question shall be deemed to be lost.

Rule 59. In considering the report of the Committee on Revision and Engrossment, each article shall be open to amendment germane to such changes as may have been reported by the committee, without previous notice, but no one shall speak more than five minutes, or more than once, on any proposition to amend.

Rule 60. When a blank is to be filled and different sums or times shall be proposed, the question shall be first taken on the highest sum and the longest time.

Rule 61. A majority of the Convention shall constitute a quorum. In all cases of the absence of members during its sessions, the members present may take such measures as they shall deem necessary to secure the presence of absentees, and may inflict such censure or pecuniary penalty as they may deem just on those who, on being called on for that purpose, shall not render sufficient excuse for their absence. No constitutional amendment shall be adopted, unless by the assent of a majority of all the members elected to the Convention.

Rule 62. For the purpose of securing the attendance of members, a call of the Convention may be made, but such call shall not be in order after the main question has been ordered, nor after the

voting on any question has commenced, nor after the third reading of an amendment has been completed.

Rule 63. When less than a quorum vote on any subject under consideration by the Convention, it shall be in order, on motion, to close the bar of the Convention, whereupon the roll of members shall be called by the Secretary, and, if it is ascertained that a quorum is present, either by answering to their names or by their presence in the Convention, the yeas and nays shall again be ordered by the President, and, if any member present refuses to vote, such refusal shall be deemed a contempt, and member or members so offending shall be cited before the Committee on Privileges and Elections, which, after inquiry, shall report to the Convention for such action as the facts shall seem to warrant, and, unless purged, the Convention may order the Sergeant-at-Arms to remove said member or members without the bar of the Convention, and all privileges of membership shall be refused the person or persons so offending until the contempt be duly purged.

Rule 64. Whenever any person shall be brought before the bar of the Convention for adjudged breach of its privileges, no debate shall be in order, but the President shall proceed to execute the judgment of the Convention without delay or debate.

Rule 65. It shall be the duty of the Secretary to keep the Journal of each day's proceedings, which shall be printed and laid on the table of members on the morning after its approval. In addition to his other duties he shall prepare and supervise the printing of the calendars of the orders of the day and cause them to be placed on the files before the beginning of each day's session. All appointments of officers and employes shall be entered on the Journal of the Convention, with the date of appointment.

Rule 66. It shall be the duty of the stenographer of the Convention to be present at every session of the Convention. He shall take stenographic notes of the debates in the Convention and in Committee of the Whole, and shall at each day's session of the Convention furnish a copy of the debates of the day before written out in long-hand, and file the same with the Secretary, who shall keep the same in his office, and the same shall at all times be open to the inspection of delegates.

Rule 67. At a reasonable time, to be determined by the Convention, and at least five days before final adjournment, the Committee on Revision and Engrossment shall be instructed to accurately enroll and engross the present State Constitution, with all amendments thereto properly inserted, or the proposed new Constitution; and the same shall be reported by said committee to the Convention,

re-election for 1893, and the Democrats decided to make a strong effort to defeat him. It was known that the fight would be bitter, and it was feared that there would be trouble and possibly a riot, unless the police interfered with a strong arm. The prospects of a row attracted crowds of sightseers, whose presence added to the disorder. The police officers and deputy sheriffs, under all these circumstances, had a delicate and important task to perform, and we assert that they discharged their duty with credit to themselves. It is noteworthy fact that of a vast number who were "smashed in the nose" by deputy sheriffs, not one appears to have been a resident of the district. It was the outsiders who suffered. Messrs. Martin and Chapin, who went into this district to act as Republican watchers, were at first excluded from the booth, but upon appealing to the police superintendent, they were at once admitted. Messrs. Thayer, Chapin and Richmond, who went there to take notes, and appeared with pencil and paper in hand, met with just such a reception as they might have expected. And we venture to say that but for the protective power of the police, it would have gone hard with these gentlemen on that eventful day. Mr. Fullerton, another visitor, says he was assaulted. Now, there are men who know Mr. Fullerton and his failings, who don't believe that he was assaulted at all, notwithstanding the fact that "Billy" Baker served six months in the penitentiary for striking him. Mr. Fullerton says that he was assaulted in the afternoon, after the disturbances mentioned by the other witnesses had ceased, and when everything was quiet and orderly.

As to the scenes inside of the polling place. When all the testimony in regard to what occurred within the polling place is boiled down nothing material remains, that is, so far as the merits of this contest are concerned, except the testimony as to the men going into the secret compartments with the voters, and that matter we have already considered. The objection of Mr. Thayer and the jostling of Mr. Chapin in no way affected the result of the election. The witness, Aeschbach, swears that no oath was administered to voters challenged, but he is contradicted by other witnesses for the contestants. He swears that Republican voters were discriminated against, and were "smashed in the nose," but he gives no names and produces no voter whose rights were thus outraged. His assertions in this respect are too sweeping and indefinite to have much weight as evidence. There was great excitement and much bad feeling among the election officers, and the proceedings were at times irregular; but it nowhere appears

that a legal voter was deprived of his vote, or that a fraudulent vote was cast, and it is affirmatively shown that the ballots were fairly counted and an honest return was made.

As to the 129 warrants for illegal registration. These warrants were delivered to the police officers late on the night before election. There was no excuse for delaying the issuing of the warrants to that late hour in the campaign. It is shown by the testimony of Judge Hatch and others, that the Republicans were inspecting the registry lists for a considerable time before election. Issuance of the warrants was simply a trick of politicians, who sought thereby to intimidate voters who might intend to cast their votes for the opposing candidate. The same is true of the warrant issued for the arrest of James Kennedy. That was another political trick. Nominally, the warrant was granted for ejecting Mr. Thayer from the booth, but the real object was to get Kennedy from the polling place, so that the Democratic candidate would lose the benefit of his services. There was no other reason for demanding that the warrant be executed immediately. The charge was a trifling one, and Kennedy was a man of wealth and prominence, in no sense a fugitive from justice. The fact that the charge was never pressed against Kennedy shows that it was not made in good faith. In no view of the case did the issuance of these warrants affect the result of the election.

All these facts and circumstances taken by themselves, amount to nothing. They are material only when viewed as acts in furtherance of a conspiracy. As we have shown, there was no conspiracy. The contest was over a trivial office, not worthy of a conspiracy on the part of the men who are arraigned as conspirators. When all things are taken into consideration, the scenes and incidents described by the various witnesses are such as might have been expected at an exciting election of the First Ward, and the attitude assumed by the police was that of an umpire whose sole duty it was to allow the contest to proceed, but to compel the participants to keep the peace and not violate the law.

In conclusion, we desire to impress the minds of the committee with the fact (which we have dwelt upon throughout the argument), that no person comes forward and says that he was a qualified voter in this election district and that he was prevented from casting his vote. Neither is it shown that a single fraudulent ballot was cast by any person. Upon these grounds we ask the committee to decide the matter in favor of the sitting delegate.

W. H. CUDDEBACK,  
*Of Counsel.*

**DOCUMENT NO. 22.**

(In Response to Resolution No. 91, Vol. 1, Page 474.)

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**RESOLUTIONS PASSED BY THE COMMITTEE ON  
LEGISLATIVE ORGANIZATION.**

*Resolved*, That in the opinion of this committee the terms of office of the Members of Assembly elected in 1894, and of their successors, should be two (2) years, and that a suitable amendment be prepared and submitted to this committee to give effect to this resolution.

TRACY C. BECKER,  
*Chairman.*

*Resolved*, That in the opinion of this committee the terms of office of Senators elected in 1895 should be three (3) years, and the term of office of their successors should be either two (2) or four (4) years, and that a suitable amendment be prepared and submitted to this committee to give effect to this resolution.

TRACY C. BECKER,  
*Chairman.*

*Resolved*, That in the opinion of this committee the Legislature should henceforth be restricted to regular biennial sessions, with power vested in the Governor to convene the Legislature when he shall certify that the public interests require an extra session, the Legislature at such sessions to be limited to such subjects as shall be specified in the call.

TRACY C. BECKER,  
*Chairman.*

## DOCUMENT NO. 24.

(In Response to Resolution No. 86, Adopted, Vol. 1, Page 500.)

## STATE OF NEW YORK:

COMPTROLLER'S OFFICE,

ALBANY, June 26, 1894.

*To the Constitutional Convention, Albany, N. Y.:*

GENTLEMEN.—I have the honor to transmit herewith a statement of the total amount of collateral inheritance tax collected in each of the counties of this State; also the amount of fees paid to each of the county treasurers, and the amount of money paid in fees to the appraisers appointed by the several surrogates, in conformity with the resolution of your honorable body, passed June 22, 1894.

Very respectfully yours,

JAMES A. ROBERTS,

*Comptroller.*

*Statement of Receipts and Disbursements on Account of Transfer  
Tax for Fiscal Year ending September 30, 1893.*

Counties.	Total tax paid County Treasurers.	County Treasurers' fees.	Appraisers' fees.
Albany . . . . .	\$39,446 81	\$1,972 35	\$567 00
Allegany . . . . .	4,057 44	202 87	27 50
Broome . . . . .	6,100 29	305 05	342 90
Cattaraugus . . . . .	5,051 21	252 49	568 44
Cayuga . . . . .	7,265 51	363 27	513 00
Chautauqua . . . . .	8,148 84	407 49	359 39
Chemung . . . . .	8,451 17	422 55	247 72
Chenango . . . . .	3,962 67	197 57	312 20
Clinton . . . . .	2,484 37	124 22	546 65
Columbia . . . . .	8,539 21	392 65	633 09
Cortland . . . . .	811 93	40 60	3 00
Delaware . . . . .	1,355 70	67 78	204 58
Dutchess . . . . .	37,957 01	1,897 74	2,315 82
Erie . . . . .	77,143 71	2,180 28	1,038 63
Essex . . . . .	1,673 72	83 69	197 30
Franklin . . . . .	4,367 47	218 36	6 00
Fulton . . . . .	1,374 26	68 70	189 66
Genesee . . . . .	7 225 61	361 62	231 55
Greene . . . . .	3,690 07	184 77	178 19
Hamilton . . . . .	.....	.....	.....
Herkimer . . . . .	8,888 73	445 64	1,060 93
Jefferson . . . . .	11,453 37	572 57	127 24

Counties.	Total tax paid County Treasurers.	County Treasurers' fees.	Appraisers' fees.
Kings. . . . .	\$362,303 92	\$6,634 38	\$4,463 42
Lewis . . . . .	2,518 14	125 91	92 95
Livingston . . . . .	5,043 82	252 17	6 00
Madison . . . . .	13,237 43	661 77	781 63
Monroe . . . . .	91,685 83	3,749 56	1,067 56
Montgomery . . . . .	4,012 39	200 61	90 00
New York . . . . .	2,227,617 44	25,276 16	21,540 00
Niagara . . . . .	2,759 52	137 95	107 49
Oneida . . . . .	14,381 30	718 53	1,139 55
Onondaga . . . . .	26,756 85	1,343 60	913 70
Ontario . . . . .	16,236 18	832 53	230 27
Orange . . . . .	23,212 86	1,160 62	847 59
Orleans . . . . .	6,663 79	330 07	248 67
Oswego . . . . .	4,753 58	237 67	143 22
Otsego . . . . .	4,636 51	231 77	664 74
Putnam . . . . .	6,610 68	330 51	217 27
Queens . . . . .	23,151 43	1,157 44	785 77
Rensselaer . . . . .	8,949 02	447 44	732 00
Richmond . . . . .	25,976 37	1,298 82	167 29
Rockland . . . . .	2,106 41	105 31	57 00
Saratoga . . . . .	26,953 29	1,347 56	1,332 46
Schenectady . . . . .	7,081 14	354 03	314 12
Schoharie . . . . .	2,683 49	134 16	82 15
Schuyler . . . . .	507 02	25 36	33 00
Seneca . . . . .	1,050 14	52 52	39 92
St. Lawrence . . . . .	13,995 93	699 80	237 52
Steuben . . . . .	2,978 84	148 97	221 85
Suffolk . . . . .	20,869 57	1,043 41	306 89
Sullivan . . . . .	2,106 80	105 40	42 60
Tioga . . . . .	3,954 94	197 63	385 68
Tompkins . . . . .	6,882 30	344 08	382 91
Ulster . . . . .	4,844 00	242 21	136 92
Warren . . . . .	19,178 10	958 89	659 97
Washington . . . . .	6,554 14	317 78	202 96
Wayne . . . . .	4,877 85	243 89	145 89
Westchester . . . . .	48,789 50	2,088 09	1,010 92
Wyoming . . . . .	1,622 66	81 13	200 63
Yates . . . . .	426 52	21 33	24 00
	<hr/>	<hr/>	<hr/>
	\$3,297,418 80	\$64,401 32	\$49,727 30

*Statement of Receipts and Disbursements on Account of Transfer  
Tax for Fiscal Year Ending Sept. 30, 1893 — (Continued).*

Counties.	Refundings.	Clerk hire, Counsel fees and disbursements.	Paid State Treasurer prior to September 30, 1893.	Paid State Treasurer subsequent to Sept. 30, 1893, to bal.
Albany . . . . .	.....	\$354 76	\$36,552 70	.....
Allegany . . . . .	.....	.....	3,827 07	.....
Broome . . . . .	.....	33 25	5,419 09	.....
Cattaraugus . . . . .	.....	.....	4,230 28	.....
Cayuga . . . . .	\$127 98	.....	6,261 26	.....
Chautauqua . . . . .	.....	.....	7,381 96	.....
Chemung . . . . .	.....	.....	7,780 90	.....
Chenango . . . . .	.....	.....	3,452 90	.....
Clinton . . . . .	.....	.....	1,813 50	.....
Columbia . . . . .	.....	25 00	7,488 47	.....
Cortland . . . . .	.....	.....	768 33	.....
Delaware . . . . .	.....	.....	1,083 34	.....
Dutchess . . . . .	.....	.....	33,743 45	.....
Erie . . . . .	.....	250 00	73,674 80	.....
Essex . . . . .	.....	15 00	1,377 73	.....
Franklin . . . . .	.....	.....	4,143 11	.....
Fulton . . . . .	.....	.....	1,115 90	.....
Genesee . . . . .	.....	.....	6,632 44	.....
Greene . . . . .	.....	.....	3,327 11	.....
Hamilton . . . . .	.....	.....	.....	.....
Herkimer . . . . .	.....	.....	7,382 16	.....
Jefferson . . . . .	45 15	.....	10,708 41	.....
Kings . . . . .	255 00	4,734 29	346,216 83	.....
Lewis . . . . .	.....	.....	2,299 28	.....
Livingston . . . . .	237 50	.....	4,548 15	.....
Madison . . . . .	.....	188 88	11,605 15	.....
Monroe . . . . .	.....	100 00	86,768 71	.....
Montgomery . . . . .	.....	.....	3,721 78	.....
New York . . . . .	3,956 37	30,256 63	{ 2,073,241 33 int. 5,036 83 }	} \$73,346 95
Niagara . . . . .	350 00	.....	2,164 08	.....
Oneida . . . . .	24 08	200 00	12,299 14	.....
Onondaga . . . . .	.....	764 00	23,735 55	.....
Ontario . . . . .	.....	.....	15,173 38	.....
Orange . . . . .	.....	.....	21,204 65	.....
Orleans . . . . .	.....	200 00	5,885 05	.....
Oswego . . . . .	.....	.....	4,372 69	.....
Otsego . . . . .	.....	.....	3,740 00	.....
Putnam . . . . .	.....	.....	6,062 90	.....
Queens . . . . .	.....	.....	21,208 22	.....
Rensselaer . . . . .	.....	.....	7,769 58	.....
Richmond . . . . .	.....	.....	24,510 26	.....
Rockland . . . . .	.....	.....	1,944 10	.....
Saratoga . . . . .	.....	307 31	23,965 88	.....
Schenectady . . . . .	.....	.....	6,412 99	.....



## REVISED RECORD.

Counties	Refundings.	Clerk hire, Counsel fees and disbursements	Paid State Treasurer prior to September 30, 1893.	Paid State Treasurer subsequent to Sept. 30, 1893, to bal.
Schoharie . . . . .	.....	\$25 00	\$2,442 18	.....
Schuyler . . . . .	.....	46 00	402 66	.....
Seneca . . . . .	.....	.....	957 70	.....
St. Lawrence . . . . .	.....	.....	12,995 61	63 00
Steuben . . . . .	.....	496 01	2,112 01	.....
Suffolk . . . . .	.....	.....	19,519 27	.....
Sullivan . . . . .	.....	.....	1,958 80	.....
Tioga . . . . .	.....	.....	3,371 63	.....
Tompkins . . . . .	160 49	.....	5,994 82	.....
Ulster . . . . .	.....	.....	4,464 87	.....
Warren . . . . .	.....	.....	17,559 24	.....
Washington . . . . .	.....	.....	6,033 40	.....
Wayne . . . . .	.....	.....	4,488 07 int. 7 31	} .....
Westchester . . . . .	.....	.....	45,690 49	.....
Wyoming . . . . .	.....	.....	1,340 90	.....
Yates . . . . .	.....	84 50	296 69	.....
	<u>\$5,156.57</u>	<u>\$38,080 71</u>	<u>\$3,071,687 09</u>	<u>\$73,409 95</u>

## RECAPITULATION.

## RECEIPTS.

Total tax received .....	\$3,297,418 80
Interest on deposits .....	5,044 14
	<u>\$3,302,462 94</u>

## EXPENDITURES.

Paid Treasurers' fees .....	\$64,401 32
Paid Appraisers' fees.....	49,727 30
Paid refundings . . . . .	5,156 57
Paid clerk hire, counsel fees and disbursements.....	38,080 71
Paid State Treasurer prior to September 30, 1893.....	3,071,687 09
Paid State Treasurer subsequent to September 30 to balance..	73,409 95
	<u>\$3,302,462 94</u>

**DOCUMENT NO. 28.**

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**REPORT OF THE SUB-COMMITTEE APPOINTED TO  
TAKE PROOFS IN THE MATTER OF THE CONTEST  
FOR SEATS TO THE CONVENTION FROM THE  
SIXTH SENATORIAL DISTRICT.***To the Committee on Privileges and Elections:*

The undersigned, the sub-committee appointed to take the proofs of the parties in the matter of the contest for the seats of the district delegates to the Constitutional Convention from the Sixth Senatorial District of the State, respectfully report that they have attended at the city of Brooklyn and at the village of New Brighton, in Richmond county, for the performance of the duty with which they were charged, and have taken the proofs of the parties to said contest, and herewith submit the same for the consideration of the committee.

Dated *June 27, 1894.*

CHARLES C. LESTER.  
JOHN GIBNEY.  
ABRAM C. CROSBY.

The sub-committee appointed to take testimony in the matter of the contest of John C. Kinkel, Charles L. Pashley, William Deterling, J. Lott Nostrand and Charles J. Kurth, contestants, against James W. Riggs, Eugene Curran, George W. Roderick, William M. Mullen and Thomas W. Fitzgerald, contestees for the office of district delegates for the Sixth Senatorial District of the State of New York to the State Constitutional Convention, assembled at the Common Council Chamber in the City Hall, in the city of Brooklyn, May 15, 1894, at 10 A. M., pursuant to appointment.

Present — Charles C. Lester, chairman, and Messrs A. C. Crosby and John Gibney.

Committee appointed C. F. Farrell, stenographer, to take the following testimony:

Appearances — Kiendl Bros. for all the contestants; James Taylor for George W. Roderick; Thomas W. Fitzgerald in person, also for William M. Mullen; Eugene Curran for himself and James W. Riggs, with privilege of substituting other counsel at a later time.

By Mr. Taylor—I have been retained with another counsel in this case, and we did not even know of the Sixth District being represented before the Convention, we know not what the protest consists of, we know of no contest nor specifications upon which they base the contest upon and we would like to see what they are that we may put in answering papers.

By Mr. Kiendl—In the first place there was a copy of the petition served; it was served from my office upon Mr. Mullen, who I understood represented the delegates. A copy of the petition was served immediately after the Convention adjourned, and of course a copy is in the hands of the committee. To be perfectly safe in the matter, after your chairman had fixed this day for the hearing, I notified each one of the gentlemen by a notice under our name, that the committee had set a day at ten o'clock, last Friday. So all the gentlemen have had notice that this hearing would take place to-day. Further, this day was agreed upon and arranged before they left the Convention, and your committee then and there fixed this day for the hearing; the extra precaution was taken to notify each and every one that the hearing would take place to-day.

Mr. Taylor—Two of those notices were served, together, yesterday morning. My client was in Poughkeepsie at that time, so he knew nothing about it.

By Chairman Lester—Do you object to proceed now or do you desire to have the hearing deferred.

Mr. Taylor—Yes; that is our object.

Mr. Fitzgerald—I object because this proceeding is not regularly here and that we have had no chance to raise a question in the Constitutional Convention as to the constitutionality of this proceeding, because this contest was not announced by the chairman, and the stenographer has no notes of it.

By Chairman Lester—The petition was filed in the Convention on the eighth of May; it was read by title.

Mr. Taylor—It was not announced and we intended to make note of it.

By Chairman Lester—The committee will consider any question of that kind that may be presented to it, but won't consider that as an objection to prevent our proceeding with the case. If the contestants have not been served with a copy of the petition and specifications we think that that service should be made at once.

Mr. Kiendl — A copy has been served upon Mr. Mullen in due time, and I don't know that it is really necessary that he should be served when we filed them; that is what has been done in the Senate and Assembly investigations.

Mr. Taylor — Mr. Mullen is one of the contestants himself, and he only represents himself.

Mr. Kiendl — Mr. Mullen informed me that he represented the contestees and I served the petition upon him.

By Chairman Lester — The committee are of the opinion that such as have not been served should be served as soon as practicable and make that direction.

Mr. Kiendl — I will have them served.

By Chairman Lester — They may have an opportunity of answering that petition as they see fit, but the committee are disposed to go on and take the testimony in this case, and inasmuch as these questions have already been thoroughly examined and every person is more or less familiar with the details to a greater or less extent, the committee think they may as well proceed to take the testimony under the petition filed here.

Mr. Taylor — I want to take exception. I do not think this question has been examined at all and the remarks of the chairman prejudice our case. We want this case decided in a judicial manner and under judicial law, and we are here to demand our rights and protect them. We want this case to be adjourned until such time as we can see the specifications and the protest in this matter and put in an answer and set up counter charges. Mr. Mullen may have been served. His case will be different from ours; it will be tried on other evidence; he appears in a different way. We think we are entitled to that. They have served no notice upon us; by accident this morning we met the librarian of the Assembly. Notices were served and reached my client yesterday morning; he was then in Poughkeepsie before the General Term. We think we have some rights here and we ask that this matter go over before any testimony is taken at all until we can put in our answer to the petition and know what we are going to meet.

By Chairman Lester — The committee are of the opinion that they will proceed to take testimony in support of the petition which has been filed, and if you desire to prepare and serve an answer or any counter charges or specifications which you may make, the committee will give them proper consideration and summon such witnesses as you may desire in support of them.

By Mr. Taylor — We protest and object to the ruling of the committee. We claim that before any testimony is taken that we have the right to put in our answering affidavits and any charges we desire to make.

By Chairman Lester — The committee overrule the objection.

Same objection made by Mr. Fitzgerald and Mr. Curran; same ruling.

By Mr. Taylor — Same objection in regard to this contest not having been offered in open Convention and announced by the chairman of that Convention, and that there is no evidence before that Convention by the stenographer who took the official proceedings that there was any such contest in the Sixth District.

Objection overruled.

Same objection by all contestees and same ruling.

By Mr. Taylor — We raise the constitutional point that this committee, the Convention, nor the Legislature have no power to confer jurisdiction to try the contest of any member elected to that Convention; that was a judicial power that rested in the judicial law, and the Legislature could not delegate that power to this committee.

Objection overruled.

Same objection by all contestees; same ruling.

By Mr. Taylor — I think in absolute fairness that before any testimony is taken, that there should be an adjournment here for a half hour to let us know on what this contest is based.

By Chairman Lester — We will call the witness.

By Mr. Taylor — We have not had a chance to examine the papers at all; we know nothing about it; we ought to have as much consideration as a witness in the case.

By Mr. Kiendl — The gentleman was a Member of the Assembly in which this whole matter was fully ventilated.

Exception by Mr. Taylor.

Herbert S. Ogden, being duly sworn, testified as follows:

Examined by Mr. Kiendl:

Q. Mr. Ogden, where do you reside? A. 1150 Pacific street, Brooklyn.

Q. What is your business? A. I am an attorney and counselor-at-law.

Q. Have you been in the habit of attending election polling places during the times elections are held? A. Yes.

Q. Are you familiar with the methods? A. I think so.

Q. Have you lately, or at any time within the last year, made an experiment for the purpose of determining how fast a vote or voting can be done? A. I did.

Objected to as being immaterial, incompetent and irrelevant.

Objection overruled. Exception.

Q. Will you please state the experiment you had and how it was made? A. It was in the early part of January, 1894, when I was asked by some gentlemen connected with the contests for the Senate and Assembly to make an experiment as to how fast voting could be done under the conditions existing in the city of Brooklyn. I thereupon had a room in the treasurers' office in the Union League Club, and duplicated, as far as possible, the conditions of a polling place; we had check clerk, ballot clerk, inspectors, watcher, canvasser, and also a room set apart where men could go in and fold their ballots. Mr. Blackman and myself, I believe, were the watchers, and we had a copy of the Gravesend list, I believe, or part of them. The names were taken at random from the list, written on slips of paper and put on a table, and a line was formed of gentlemen; they came in, took the slip of paper from the desk, went to the ballot clerk, took the ballot, one for each party as they announced their name. Their names were found upon the list, were checked, they went in and folded their ballot, came out and deposited them in the same way as would be done in a polling place in this city, and I kept the copy. The number of votes cast under those conditions, without any challenging being offered at all, were twenty-seven in twenty minutes, or eighty-one votes an hour. The voting was conducted under more favorable conditions than I have ever seen in any polling place in Brooklyn.

Q. Were there any pasters or any scratched ballots used on that experiment? A. There were none.

Q. I believe I understood you to say there was no challenging, no delay of the voters by being challenged? A. There was but one person sent back, and he was sent back on account of having his ballot improperly folded. The distance from the place where they folded their ballots to where they cast their ballots did not exceed twelve feet; it was in a separate room, but did not exceed a distance of twelve feet.

Q. Was there, during all the time that the voting took place, a line formed. A. There was; it was continuous.

Q. Mr. Ogden, from your experience as a voter, and from the experiment that you made, do you think that it is possible that more than one vote can be cast in a minute?

Objected as to what witness thinks.

By Chairman Lester — We will take his opinion.

A. I think that under the most favorable conditions with men of more than average intelligence and fully conversant with what they have to do, that more than one vote a minute can be cast for perhaps one, two, three or four hours. I think it is possible to cast more than one vote a minute, because we cast it there, but it wouldn't greatly exceed that.

Q. In your opinion would it be possible to cast two votes a minute during the entire day? A. I don't think it would. For the first three or four minutes you can cast votes much more rapidly than you can after that time, because the line then forms and you only have one person to check off, and the consequence is that after the voters come out of the booths and come back they meet those who are going in, and the consequence is that you can't cast the votes as fast as you did when they first went in.

Q. Were any of the voters assisted in voting. A. None whatever.

Q. At the last election, how many minutes did we have for voting? A. I think, 612.

By Mr. Kiendl — We had 605.

Q. Now, Mr. Ogden, with a registry list of 2,465 names, do you think it is possible from your experience as a voter and from your experiment, to vote from such a list 1,512 names in the time allotted by law, in one polling place?

Objected to that witness' experience is immaterial.

By Chairman Lester — We will take his opinion.

A. I do not think that under the conditions with all the names it is possible where men have to put in their names, be checked off, get the ballots and all the formula such as the law requires, to vote 1,500 names in the election day.

Q. Mr. Ogden, how long have you been a voter? A. I have been a voter twenty-one years; I have not been voting in Kings county that length of time; I have voted in Kings county since 1876.

Q. During all that time you have been familiar with elections?  
A. I have never missed voting at any election.

Q. Now, in your judgment or opinion, supposing the polling place to be open for 612 minutes, under all the ordinary circumstances, such as challenging, sending back to correct ballots improperly folded, what in your opinion would be the highest number of votes that could be polled in one polling place at that time?

Objected to as being immaterial as to his opinion. Overruled. Exception.

A. That would depend largely upon the degree of intelligence of the person voting. I think that if you had men of more than average intelligence, fully conversant with their duties, and there were no contests, I think that you could probably vote over 700, but I do not think under ordinary conditions with the ordinary community, I do not think you could vote one vote a minute all day long.

Q. But under the most favorable circumstances you don't believe we could poll more than 700 or 800 in one day? A. I don't see how it is possible, because the average check clerk nor the average man connected with the booths couldn't keep it up; he has got to deliver quick to take care of eighty names an hour, that it over one name a minute; I don't see how it can be done at a greater speed than that.

Q. Now, Mr. Ogden, the list that you used as a poll list was a very small list, containing names only on one page? A. That was all.

Q. Do you know the size of the poll list that was used at Gravesend? A. I do not. I understood that this was a copy.

Objected to.

A. I think I saw it in evidence here, that was all; the day that it was introduced here in evidence.

Cross-examination by Mr. Taylor:

Q. In this investigation, you made an experiment at the Union League Club; you had no booths there, did you, in a circle, as there are in a poll? A. No, sir.

Q. They all went into one room? A. Adjoining the treasurer's office is a small room, and that room. I didn't build booths in; I fixed it so that the different men could stand at different places



just the same as in a booth, without the partition; it wasn't as far from where they deposited their ballots as where you are.

Q. Did you witness the experiment that was made at Gravesend? A. I did not.

Q. And if they voted down there more rapidly than they did in the Union League Club, what would you attribute that to? A. Well, sir, I should attribute it to fraud.

Q. Fraud on the part of the investigators or on the part—  
A. Fraud on the part of those who were conducting the experiment.

Q. And they were deceiving the committee of the Senate? A. I do not know.

Q. But anything that does not agree with the experiment that you made is a fraud? A. No, sir.

Q. Now do you know that as a fact there were 1,600 votes cast at the spring election in Flatbush? A. I do not know it as a fact; I understood so.

Q. If that did occur, would you stamp that as a fraud? A. No, because I do not know the conditions upon which it occurred.

Q. Where they take and prepare the ballot and cast it, would you stamp that as a fraud if 1,600 votes were cast in Flatbush on election day? A. Not necessarily.

Q. Up in Oswego there were 1,260 votes cast there in five hours; would you stamp that as a fraud? A. Not necessarily, for I don't know the conditions under which it was cast. I should say that if it were cast under precisely the same conditions that votes are required to be cast in a polling place in the city of Brooklyn, I should say it was, for I can't conceive how 1,500 votes can be honestly cast on the election day in five hours under the conditions such as the law requires that they shall be cast here.

Q. And this in your judgment would be the controlling force when you make up your mind? A. Why, certainly.

Q. The conditions upon which you formed your opinion were those that were created at the Union League Club? A. The conditions upon which I base my opinion are the conditions required to cast a ballot in a polling place in the city of Brooklyn.

Q. And you arrived at your opinion from the conditions that existed in the Union League Club? A. Not altogether.

Q. You made no test outside of the Union League Club? A. We made no physical test whatever.

Q. And do you mean to state, Mr. Ogden, that from your mere observance on election day that you could form an estimate of how

many votes could be cast? A. Certainly; I would be willing to swear to it.

Q. Is this not a fact that the conditions under which votes have been cast in this city where you have been voting since 187—, have been different every year as to the manner of voting, the polling place and the whole circumstances surrounding the election have been changed, have they not? A. Not every year.

Q. And what would be a state of facts in regard to the time consumed one year, would be different in another. A. Not every year. The time consumed now would be different from what it was in 1876, 1880, or even in 1885.

Q. Different in 1887? A. Yes, sir, in 1887 and 1888; because we are under a different law and the conditions surrounding the polling are different.

Redirect-examination by Mr. Kiendl:

Q. I understood, Mr. Ogden, that you did not see or attend the experiment made at Gravesend? A. I did not.

Q. And I believe you have made up your mind that if they voted at the experiment and cast more votes than they did on election day within the same period of time, that the experiment must have been a fraud? A. Not necessarily; if they did it under the same conditions which an honest election requires, I can't understand how 1,500 votes were cast in the time you state. I understood from my own knowledge under precisely the same conditions that are required to cast a ballot on election day.

Recross-examination by Mr. Taylor:

Q. The conditions in Gravesend on election day to cast a ballot were not necessarily more severe than they were in the city, were they? A. I think not.

Q. In your judgment, weren't they less severe than they would be in the city? A. Well, I think nearly the same. If anything, less severe. By that, I mean that ordinarily in a small place the poll clerk and the persons around whose duty it is to superintend the election, as a rule, are better acquainted with the voters, and it takes less time to identify them and to find their names than it would in an election district of the city; if anything, the conditions are slightly more favorable to a quick vote in a small place than they would be in an election district in the city. And the poll clerk in taking down the names could do it more rapidly where he was acquainted than he would in a city district where the voters were unknown to him.

Q. And his knowledge of the people and having served there in that capacity as poll clerk would materially assist him in helping the voters? A. It would assist him some.

Redirect-examination by Mr. Kiendl:

Q. Mr. Ogden, you used in this test how many ballots, the same number that were used at the general election? A. Yes, that is the same number of tickets.

Q. Just look at this registry list of the town of Gravesend and assume that you have to look for the name—

Objected to.

By Mr. Kiendl—This is a certified copy of the list signed by the town clerk that was used before the Senate Committee in the investigation before him.

Chairman Lester—You may ask the question.

Objected to as being registry list of Gravesend.

Chairman Lester—The committee don't assume that it is a paper purporting to be the registry list of Gravesend.

Objected to as being immaterial.

Chairman Lester—We will take it on the assumption that the paper will later be introduced.

Exception.

Mr. Kiendl—I simply offer that for identification to see how long it will take to find a name. Now, will you please find the name of William Perry under the letter "P"? A. I have it.

Q. How long do you think it would take to find the average names on such a registry list as that?

Objected to on the ground that the investigation was wholly farcical.

Chairman Lester—We will take it for what it is worth.

Mr. Taylor—It doesn't even purport to be the registry list.

Chairman Lester—All those circumstances are susceptible of proof.

Witness—It is more difficult to find the name on Gravesend than it would be on a poll-list of any district in the city, because there are so many more names.

Mr. Taylor—I move to strike that out, because the gentleman has already testified that he knew nothing of the original list of voters, the registry list of Gravesend, or the manner in which it was kept.

Witness — I think I did see it when it was offered in evidence.

Chairman Lester — There is a paper which has been offered in evidence which is a copy of the poll-list. The opinion of this witness in respect to the length of time it would take to find a certain name upon that registry list is based solely upon his inspection of this copy. The committee will take his opinion.

Objected to.

Mr. Kiendl — You saw the original registry list, did you not, with the investigating committee of the Senate? A. I saw a list which purported to be the original list; I don't know it of my own knowledge; it was introduced as the original list; I don't know of my own knowledge that it was offered in evidence as the original list and received.

Paper offered in evidence and marked Exhibit 1 of this date.

Q. That was the one that the town clerk of Gravesend had before the committee of the Senate in this room? A. That was introduced by a person purporting to be the town clerk. His name was called, the list was introduced in evidence and I was again heard in it; I don't know that he was the town clerk.

Q. Supposing a list of this kind being made up of persons who are barkeepers, cooks, race track men, jockeys or waiters whom the officers or inspectors may see only once or twice in a year, do you think that he would be assisted in knowing those persons so as to find their names very rapidly upon a poll-list or a registry list? A. I do.

Objected to as being immaterial. Objection overruled. Exception.

Recross-examination by Mr. Taylor:

Q. Mr. Ogden, in this experiment you had at the Union League Club, were there any preparations for it, were the people who took part in it drilled? A. No, not at all; they didn't know two minutes before the experiment took place. Mr. Bell told them to take their places in the line to perform the experiment.

Q. And they had no other knowledge of what you were going to do, or anything of that kind? A. I told them I was going to perform an experiment in voting.

Q. And your object was to show that a certain number of votes could not be cast in a given time? A. My object was to find out how many votes could be cast.

Q. Wouldn't it be under more favorable conditions if the men were taken and the matter explained to them, or some system.

Wouldn't the men have voted more rapidly under the circumstances?

A. It wouldn't have been so fast.

Redirect-examination by Mr. Kiendl:

Q. These men were all bright, intelligent men, were they not?

A. I should consider them intelligent men, yes, sir.

Q. What were their general professions, merchants? A. They were of all professions; merchants, lawyers, insurance men and men of the various avocations and walks in life.

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### PROCEEDINGS.

May 15, 1894, 2 o'clock P. M.

Present—All the committee; Mr. George Kiendl, for the contestants; Mr. James Taylor and Mr. James W. Glendenning, for the contestees.

Mr. William M. Mullen—Mr. Chairman, I understand that this gentleman has taken upon himself the right to say to this committee that I appear for the respondents in this proceeding. He assumed that right by reason of the fact, as I understand, that he said he had served upon me a notice of the petition of contest. I desire to say to this committee that I have never been served in person with any articles or statements of petition of contest in this proceeding.

When I appeared at my office on Saturday morning last, I found there, in possession of one of my clerks, a petition and articles of contest, which were handed me by one of my clerks. I desire to say to this committee that I do not appear in behalf of the respondents in this proceeding, either as counsel or otherwise. But I do appear, and desire to have it put upon the minutes, to object to the jurisdiction of this committee to entertain or take proof of any matters or allegations of contest, in relation to my right to hold and keep the position of a member of the Constitutional Convention of the State of New York.

My grounds of objection and protest are as follows: I claim that the Constitution of the State of New York is the organic law of this State. It governs all the actions of all political bodies of this State. No body may act or exercise any power within this State save such power as is vested in that body by authority of the Constitution of the State of New York; and I desire to call particularly to the attention of the committee the fact that in the Constitution of the State of New York it is provided in express

terms that both branches of the Legislature shall be the judges of the election and qualification of its members, and by virtue of the expression in the Constitution, the Legislature, in each of its branches, acquires jurisdiction to try and determine the election and qualification of its members.

I also desire to call the attention of the committee to the fact that the Constitution of the State of New York, in reference to the political body of which I am a member, and of which the chairman is a member, is silent upon the subject as to whether the Constitutional Convention shall be vested with the right or power to question the capacity or the right of any member presenting his certificate to that Convention, and upon which certificate he has been sworn in and becomes a member of the Convention, and his right to occupy his seat and take part in the deliberations of that body. All the Constitution of the State of New York provides in reference to the Constitutional Convention is this: It provides that the Legislature may, at least once in twenty years, pass an act submitting the question to the people of the State of New York, whether an election shall be had to create a Constitutional Convention, and also providing for the ways and means to defray the expenses of that Constitutional Convention. But the Constitution is silent as to any power being vested in the Constitutional Convention, or in the Legislature of the State of New York, whereby the right of any member elected may be impugned, questioned or traversed; and when the Legislature of the State of New York undertook to pass an act, or a portion of an act, which provided, in addition to what the Constitution enabled it to do, to wit, to submit to the people the question of whether or not a Constitutional Convention should be called and assembled in Albany, or elsewhere in this State, for the purpose of there submitting a new Constitution or amendments to the present Constitution, submitting the same to the people for their vote at the next ensuing election; when they undertook, Mr. Chairman, to add to that, by saying that this body shall be the judges of the qualifications and election of its members, they usurped my constitutional right as an American citizen and as a citizen of the State of New York. And I here protest on behalf of myself, and appear for no other purpose. I protest against the jurisdiction of this committee to inquire into my right to hold this office. I protest in behalf of my associates against the jurisdiction of this committee to inquire into the rights of my associates to hold and exercise their rights of office. I protest and object to the body organized as a Constitutional Convention to appoint and delegate to a com-

mittee, of which you are a sub-committee, the right to question, report and decide upon my right to hold my office as a constitutional delegate, and the right of my associates to hold their offices as constitutional delegates, and their right to participate, to the end, as such constitutional delegates of the State of New York.

And I want it distinctly understood, in conclusion, that I never intimated to Mr. Kiendl, or to any other individual, that I waived any of my rights of protest, any of my rights to exercise my privileges as a member of this Convention; and that I never intimated to him, by inference or otherwise, that I appeared generally, or otherwise, for myself or associates, before this committee, or before the Committee on Contested Elections in this State. This is my first appearance; and I appear here now to protest and object, and I ask this committee to afford to me and my associates a reasonable time and opportunity to file with this committee such answer (if we are overruled upon this objection) as may be proper in the premises for us to submit to the petition of contest here, so that you may have an issue joined before you, so that you may be in a position to sit here as an impartial body if you decide that you have the jurisdiction to decide the question, that you may sit here as an impartial body when the issue is joined, and that you may report to the body which appointed you, the evidence that has been taken before you, and leave it for them to decide whether or not upon that evidence — we having saved our position by our protest and objection — sufficient has been shown to disentitle us to our seats in the Convention; and I would ask this committee, under the circumstances, to adjourn for at least forty-eight hours and afford us an opportunity to prepare an answer to the broad and sweeping allegations contained in the petition of contest, so that we may frame an issue for you to try and determine; so that we, as American citizens in our constitutional rights, may be protected; so that your Constitutional Convention, which you represent, will come before the people, not in the light of a partisan body, not in the light of a body of politicians, catering or pandering to public clamor, but sitting here as judges, dispassionately, fairly and openly, without consideration of political motives, without personal consideration, without any consideration, other than the rights of the individual, vested in him by the laws and the Constitution of the State.

We demand that. We have not been accorded a fair opportunity of hearing here. I was not in possession of the articles of contest until late on Saturday afternoon. I received no notice of the fact that there was to be a hearing before this committee

until I arrived at home at one o'clock this morning. I left home at half-past six yesterday morning, and went into Orange county, attending at Monticello, in court, and was unable to reach my home until one o'clock this morning, when I found a notice of the fact that there was to be a hearing here before this committee to-day. This is a matter of grave importance. This is not a matter that affects the Republican party, nor is it a matter that affects the Democratic party, or any other party in this State. It is a matter that affects the whole people. It is a matter that occurs not more than once in twenty or twenty-five years; and we as American citizens, sons of the soil, are entitled to our rights under the Constitution of the United States and under the Constitution of the State of New York—entitled to a fair and impartial trial—and we demand that at the hands of this committee. We demand that we be afforded an opportunity to join issue with these contestants; we demand that we be accorded the right that nothing but common law evidence be submitted to this committee. We demand, most humbly, that we be accorded the same right that the most abject criminal in this land is afforded, and that is a fair and impartial trial, and that we be not convicted of having been elected by illegal means, or catering to such means or purposes, and that we be afforded the opportunity to have our trial upon common law evidence and submitted to the body of which we are members, and, on behalf of myself and my associates, I ask this committee to adjourn this hearing until the day after to-morrow, at twelve o'clock, so that we may be afforded an opportunity to prepare for trial in this matter—prepare for a fair and impartial hearing, and to submit the whole matter to the people of the State of New York, as represented in this Constitutional Convention, upon the evidence and upon nothing else.

The Chairman—The question of the right of the Constitutional Convention to decide in respect to the election of its own members has been passed upon by the Convention, necessarily, in appointing this committee, which is here present for the purpose of taking evidence; and this committee will not review the decision of the Constitutional Convention in that regard. The committee will accord to the contestees, of course, the right to file such answer to the petition as they may see fit, and the committee will hear whatever evidence the contestees see fit to introduce in support of the answer, or to break down the allegations and proof of the contestants. But the committee is here to-day for the purpose of proceeding with the taking of such testimony



in support of the petition as the contestants are prepared to introduce, and they will proceed to take evidence in support of the petition, and when that evidence is closed, they will give such reasonable opportunity as the circumstances call for, to the contestees to summon and procure the attendance of their witnesses.

Mr. Mullen — Is there any rule that you have adopted as to what shall be considered evidence before this committee?

The Chairman — The committee have adopted no rules. The committee do not consider themselves bound by the strict common law rules of evidence. They will endeavor to take whatever evidence in their judgment seems to throw light upon the matter in issue, and will not be governed by the strict common law rules of evidence.

Mr. Mullen — Will your honor, if I may address you as such, inform me how much time you intend to devote to this investigation, for we desire an opportunity to answer the allegations or evidence that may be offered here.

The Chairman — The committee has not determined how much time they will devote to it. They will devote such time as seems to be necessary to accomplish the work which has been delegated to them.

Mr. Mullen — Will you adjourn the matter to such time as that the testimony may be written out, so that we may look at it. We do not care to have the proceedings railroaded through.

The Chairman — There is no disposition on the part of the committee to railroad the proceedings through. At the same time, they feel that it is a question which should be determined at the earliest possible moment, in order that the people who are entitled to seats in the Convention may occupy them at the earliest possible moment, and take their share of the work of the Convention. The committee will listen to any application in respect to that at the close of the testimony in support of the contestant's case, and will then decide. They will not decide at present.

Mr. Mullen — The chairman made a remark that it is the desire of the committee to take the testimony as speedily as possible, to the end that those who are entitled to their seats in the Convention may occupy these seats and take their part in the deliberations of the body. Permit me to call your attention to the fact that I was sworn in as a member of the Convention on Tuesday last. I am as much a member of that committee as you are; so are my

associates. We have as much right to our seats in that Convention as you have, so far as the present determination of that body is concerned. That question is settled for the present. Now, I submit, Mr. Chairman, that there should be no undue haste. While I do not charge this committee — far be it from me to indicate or insinuate that you have any desire to railroad any matter through — yet, under the circumstances, the Convention having determined who are entitled to seats, all that remains for your committee to do is to get a full and exhaustive hearing and examination of the questions submitted to you; and, as you very properly said, after the contestants close their case, afford to the contestees a fair and ample opportunity to present their case; but for the present we are as much members of that Convention, as much entitled to our seats, as you are, and as much members of it, and are to be treated as such.

The Chairman — We will endeavor to treat you with all the respect that your position as fellow-members of the Convention entitles you to.

Mr. Crosby — You, perhaps, are anxious to know whether you are to be disturbed in your seats, as early as possible; to have this contest closed as early as possible, for that reason.

Mr. Mullen — With due regard to the rights of all the parties.

The Chairman — You may proceed with your witnesses, Mr. Kiendl.

Henry D. Joy, M. D., sworn by the chairman, and examined by Mr. Kiendl:

Q. Where do you reside? A. New Brighton, Staten Island.

Q. What is your occupation? A. Physician.

Q. Are you connected with the Sailor's Snug Harbor Institution?

A. I am.

Q. Where is that located? A. New Brighton, Staten Island.

Q. How long have you been connected with that institution?

A. Eleven years.

Q. Are you acquainted with the patients and people in the institution? A. I am.

Q. And you have been, eleven years? A. Yes, sir.

Q. Do you know a man by the name of Thomas —

Mr. Taylor — I object to going into the list of any of the voters of that district, until they produce the poll-list of the district and identify it to this committee.

Objection overruled and exception taken.

Mr. Kiendl — So that the gentleman can be accommodated, I offer in evidence a copy of the polling-list of the eighth election district of the town of Castleton.

Mr. Taylor — I object to it, as not the best evidence; that they have not shown that they are unable to produce the original; that they are bound to do that.

Mr. Kiendl — I offer them in evidence; they are certified copies.

The Chairman — State the grounds of your objection.

Mr. Mullen — It is objected to on the ground that it is not the best evidence; that there is no foundation laid for the introduction of this evidence; that the contestants have failed to show that they have been unable to obtain and produce the originals of which these purport to be copies. On the additional ground, that these do not appear to be copies even of the registers of which they have offered them as copies.

The Chairman — Mr. Kiendl, what do you understand to be the meaning of the words *ex-officio*, after the official designation of the town clerk?

Mr. Kiendl — He is probably out of office.

Mr. Mullen — He is not out of office; he is in office, and has been continuously.

Mr. Kiendl — He was in court this morning, and went away, and is coming back.

Mr. Mullen — Mr. Chairman, let me call your attention to this. If the original polling-list from which the people voted is in existence, it ought to be on file in the office of the clerk of the town of Castleton. He ought to be subpoenaed here to produce that original polling-list. The gentleman says he has been subpoenaed, and says he has been here. Now he is not here; the evidence which he is called to produce is not produced before this committee, and the gentleman seeks here to introduce in evidence, what? He does not claim that it is the list from which the people voted at the last election, but that it is the list which was carried over from 1892, for the registrars to take names and put upon the new list. Why does not he produce the new list, so that we can know who were entitled to vote at the polls last fall?

The Chairman — The committee will receive this. They will give to the contestees, if they require it, a subpoena requiring the original records to be produced, and, also, the contestees will have an opportunity to examine these and compare them, if they desire so to do, with the original records, and if their correctness,

as copies, can be impeached, they will have an opportunity to impeach them.

Mr. Mullen — Mr. Chairman, I except to that ruling, and I desire to have it stated upon the record that there is no foundation for this evidence. It has not been shown that these are copies of any originals that are competent evidence in this case, and I ask to have these papers marked for identification, or mark them in evidence so that we can bring them up if necessary before the Constitutional Convention to submit to them such evidence as has been admitted; and, furthermore, I desire to object and except to the ruling of the court upon this ground, that the burden of proof is shifted by the ruling of the court to the contestees from the contestants, in saying that we shall be afforded an opportunity to issue subpoenas to bring before this committee the originals, of which these purport to be copies. We are not called upon to assume the initiative in this matter until a case is established against us.

Mr. Kiendl — The papers are marked "8th Election District of the Town of Castleton, Richmond County, 1893; filed November 8, 1893; (signed) J. F. O'Grady, Clerk;" also, "Register of Electors, 9th District, Town of Castleton, Richmond County, 1893; filed November 8, 1893; (signed) J. F. O'Grady, Clerk;" also, "Register of Electors, 8th District, Town of Castleton, Richmond County, 1893; filed November 8th, 1893; J. F. O'Grady, Clerk;" also, "Register of Electors, 5th District, Town of Castleton, Richmond County, James McCarty, 1893, filed November 8th, 1893; (signed) J. F. O'Grady, Clerk;" also, "Register of Vote of Electors, 9th District, Town of Castleton, Richmond County, 1893, John T. Blatchford;" also, "Register of Electors, 5th District, Town of Castleton, Richmond County, 1893; filed November 8, 1893; C. A. H."

Mr. Mullen — I object.

The Chairman — The committee will receive these under the statement that has been made.

Mr. Mullen — To concede the most that the counsel asked, it is that he offers copies of what purport to be legal documents, registers of voters. He produces one paper signed by a man named Blatchford. He produces another, signed, filed November 8, 1893, signed C. A. H. There is no evidence who C. A. H. is; whether he had any authority to sign the paper at all or not.

Mr. Kiendl — It is signed by the county clerk under seal.

Mr. Mullen — The law does not allow him to file it in his office. It says it shall be filed with the town clerk; that is no evidence on its face. Now, I take occasion to state to the committee that I compelled the county clerk, by mandamus, in a number of cases, where he undertook to assume to take possession of these papers, I compelled him by mandamus to return them to the town clerk of the various towns of the county, where the county clerk had wrongfully taken possession of them.

The Chairman — How many of these registers are certified in this way?

Mr. Kiendl — That one only.

Mr. Mullen — We move to exclude that.

The Chairman — What have you to say to the objection of counsel, Mr. Kiendl?

Mr. Kiendl — I supposed it was signed by the town clerk; how it came to be signed by the county clerk, I cannot understand, unless they were in his office, and while they were in his office he certified them as a part of his record.

Mr. Mullen — We claim that this county clerk has been inimical to our interests, and if these papers appear here, it is through collusion. We do not mean the present county clerk; we mean his predecessor.

The Chairman — The committee are of the opinion that this document certified by the county clerk cannot be received.

Mr. Kiendl — I will produce the original. The next is the "Register of Electors, Ninth District, Town of Castleton, Richmond County, 1893; filed November 8, 1893; (signed) J. F. O'Grady, Clerk."

Mr. Crosby — Are these the first lists?

Mr. Mullen — These are the first lists. The last lists they have not produced here. There is no evidence showing what the results were. There is no evidence at all. This is, in fact, evidence of what existed the year before, and not what existed last fall. We cannot go by this. They took it, the old polling-list for the year 1893, and that was held open on the eighth, which was the first day we held for the purpose of registration. That was held open for the people to transfer from that list to the next one, and on the second day it was held open, and for a week or ten days for the people to come and be registered. These are the papers used on the first day of registration; not those that the people voted from.

The Chairman — You may proceed with the evidence.

Mr. Mullen — I ask that the contestants be required to produce the corrected lists, made up and certified by the committee of the second and last days' registration.

The Chairman — Proceed with the examination of the witnesses.

Mr. Kiendl, resuming:

Q. Now, doctor, do you know Thomas Barclay? A. Yes.

Q. Is he an inmate of the institution? A. Yes, sir.

Q. Do you know H. B. Burlingham? A. Yes.

Q. Is he an inmate of the Sailor's Snug Harbor? A. Yes.

Q. Do you know C. S. Brown? A. I do.

Q. Is he an inmate? A. He is.

Q. Do you know H. Britto? A. I do.

Q. Is he an inmate? A. He is.

Q. Do you know J. L. Brown? A. I do.

Q. Do you know J. T. Chase? A. I do.

Q. Do you know J. Coventry? A. I do.

Q. Is he an inmate? A. He is.

Q. Both of them? A. Yes.

Q. He is, also? A. Yes.

Q. Is William Clark No. 2, known as such? A. He is.

Q. R. Comstock? A. He is.

Mr. Mullen — Are you testifying from the printed case, or from your memory? A. I cannot remember all of them.

Mr. Mullen — I ask the committee to instruct this witness that he must put aside the printed paper before him, and testify from his memory.

The Chairman — The witness has a memorandum, which is not on a printed paper, and I will permit him to refer to that memorandum.

Mr. Mullen — Provided he made it at the time of the occurrence.

Witness — Which I did. I had it before when I was examined.

Mr. Mullen — I desire to object to this line of examination on the ground that the witness appears to be reading from a memorandum in front of him, which is identical with the printed memorandum contained in the hands of the counsel for the contestants. It contains all the answers and questions, I presume, which are contained in the paper before the counsel; anyway, it contains the list of names.

The Chairman — The objection is overruled.

Mr. Mullen — I take an exception.

Mr. Kiendl, resuming:

Q. These two last named gentleman, are they inmates? A. They are.

Q. R. Comstock, is he an inmate? A. He is.

Q. E. H. Cook, is he an inmate? A. He is.

Q. William Daly? A. He is.

Q. John Decker? A. He is.

Q. J. Dougherty? A. He is.

Q. W. Evans? A. He is.

Q. Joseph Evans? A. He is.

Q. James Fisher? A. He is.

Q. Charles Francis, is he an inmate? A. He is an inmate.

Q. Joseph Gillespie? A. He is.

Q. W. H. Hughes? A. He is.

Q. J. Hutton? A. Yes.

Q. T. Hollywood? A. Yes.

Q. F. Hayes? Is he an inmate of the institution? A. I have no name Hayes; I have F. Hoyer.

Q. J. Hoffnagle? A. I have.

Q. A. W. Hartwell? A. Correct.

Q. Charles Holloran? A. Yes.

Q. A. Ireland? A. Yes.

Q. Peter Kelly? A. Yes.

Q. C. F. Lincoln? A. Yes.

Q. P. Long? A. Yes.

Q. F. F. Lee? A. Yes.

Q. John Lee? A. Yes.

Q. Charles Lapierre? A. Yes.

Q. Francis McMahon? A. Yes.

Q. Oscar Meyers? A. Yes.

Q. Charles Meyers? A. I have no Charles Meyers; I have Oscar. I have no Charles Meyers.

Q. Martin McPherson? A. Yes.

Q. James McFadden? A. Yes.

Q. M. Murphy? A. Yes.

Q. Charles S. Mead? A. Yes.

Q. D. Noble? A. Yes.

Q. H. Nugent? A. Yes.

Q. Irving Peck? A. Yes.

Q. W. Patterson? A. Yes.

Q. Thomas Patterson? A. Yes.

Q. W. Quail? A. Yes.

Q. J. Riddle? A. Yes.

Q. E. F. Seibert? A. Yes.

Q. Robert Thompson? A. No, sir; there is no Robert Thompson.

Q. What Thompson have you? A. Henry Thompson.

Q. Horace Sherman? A. Yes.

Q. William Tukey? A. Henry Tukey.

Mr. Mullen — May it please the commissioners, I have no desire to repeat objections, but it seems to me that there ought to be some rule established for the admission of evidence. The witness is testifying to a list of names that may be inhabitants of Canada. There is no evidence that these names are upon the poll-list of the voters who voted at the last fall election. That I claim as a preliminary.

The Chairman — It is a mere question of the order of proof. The committee will receive this evidence and allow it to be supplemented by that proof hereafter.

Mr. Mullen — We take an exception.

Mr. Kiendl, resuming:

Q. Charles Felton? A. Yes.

Q. C. L. Felton? A. Yes.

Q. H. Wilson, known as No. 1? A. Yes.

Q. H. Wilson, known as No. 2? A. Yes.

Q. E. Whalen? A. Yes.

Q. J. Willmore? A. Yes.

Q. Alexander Freeman? A. Yes.

Q. Are all these persons just mentioned by you inhabitants of the Harbor? A. They were at that time.

Q. In November, 1893? A. In November, 1893.

Q. In what election district is the Harbor, the town of Castle-ton? A. Eighth and ninth districts.

Q. Are either of these gentleman named unable to vote without assistance, or blind?

Objected to by counsel for contestees, as calling for a conclusion, and that no foundation is laid for the evidence; that the witness is not shown competent to testify, or that he has knowledge of the fact. That he has not given any testimony as to their physical characteristics or ability.



Q. These gentlemen are all in the institution, are they? A. They are.

Q. You are the physician of that institution? A. I am.

Q. You know each and every one of these gentlemen, do you not? A. I do.

Q. Have they all been under your care, more or less? A. Yes.

Q. You have talked with them, and know them well? A. Yes.

Q. From what you know of these gentlemen, are either or any of them unable to vote without assistance?

Mr. Mullen — I object to it as incompetent, irrelevant and immaterial, and that no foundation has been laid for the introduction of such evidence.

The Chairman — Why don't you interrogate him in regard to their physical condition?

Mr. Kiendl — I will let my friend do that.

Q. Doctor, you are acquainted with the physical condition of these gentlemen, are you not? A. I am.

Q. Are any of them disabled from folding a ballot, by sight or otherwise? A. No, sir.

Q. None of them? A. None of them.

Q. They are all able to vote without assistance? A. Yes.

Q. Are any of them crippled?

Mr. Mullen — I ask to cross-examine this witness upon that question.

The Chairman — You will have an opportunity to cross-examine him.

Mr. Mullen — I ask to do so now, for the information of the committee, it being a question as to his knowledge and competency.

The Chairman — We think we will let the contestants complete their examination of the witness, and then you will have an opportunity to cross-examine.

Mr. Kiendl, resuming:

Q. Doctor, you say that none of them have any physical disability? A. They have, some of them; some of them are lame, and a great many of them have the palsied condition of their age.

Q. Can they all see? A. They can all see by glasses, which they have.

Q. By the assistance of glasses they can all see? A. Yes.

Q. And they all move around and go about? A. Yes.

Q. In the ordinary way? A. Yes.

Q. They have the use of their hands? A. Yes.

Q. And walk without assistance? A. They walk with the assistance of crutches, one or two of them, but are able to go out and around, and do go around.

Mr. Mullen — We object to these leading questions.

The Chairman — Was this condition which you have described their condition in November last? A. Are you speaking of their condition last November?

Q. Their condition last November? A. Yes, not at the present time; some of them are dead now.

Cross-examined by Mr. Mullen:

Q. Doctor, will you be good enough to read off the first name that appears on the list? A. Burlingame.

Q. How long have you known Mr. Burlingame? A. As long as he has been in the institution.

Q. How long is that? A. I don't know.

Q. You do not know? A. I do not remember.

Q. Why don't you know? A. I do not carry all the dates in my mind.

Q. How long have you been in the institution? A. Eleven years.

Q. Has he been there eleven years to your knowledge? A. He has been there several years; I couldn't tell how many years.

Q. How many years? A. I don't know.

Q. Why don't you know? A. It's a great compliment you pay me, but I don't see how it is possible for me to remember eight hundred names.

Q. How long do you remember his being there? A. Three or four years, I imagine.

Q. Is it three or four years? A. I don't know.

Q. Will you swear that he has been there a year? A. I will swear that he has been there a year, yes.

Q. Will you swear that he is there over two years? A. No, sir.

Q. Will you swear that he has been there eighteen months?  
A. Yes, sir.

Q. How do you know? A. Because I have treated him.

Q. When did you first treat him? A. I don't know.

Q. When did you treat him eighteen months ago and what for?  
A. I don't know.

Q. You do not know; what do you mean by that? A. I could

not tell; I haven't my book here; he is not an inmate of the hospital; he is an inmate of the institution.

Q. Do you mean this committee to understand that you cannot testify to anything that you do not know, anything unless it is in writing before you? A. No; I know the man's physical condition.

Q. Answer my question. Do you want this committee to understand that you are unable to testify to anything from your own recollection, which occurred eighteen months ago, unless you have the matter written out in front of you when you testify?

A. Yes.

Q. That is what you want the committee to understand?

A. Yes.

Q. Did you ever accompany this man to the polls when he voted?

A. No, sir.

Q. You never saw him vote? A. No, sir.

Q. Did you ever see him undertake to take a paper, 6x4, and undertake to fold it lengthwise and crosswise, in the manner in which a ballot should be folded, so that he could use it for the purpose of casting a vote? A. No, sir.

Q. Are you willing to swear of your own knowledge and observation that this man is enabled to fold and cast a ballot, by reason of the ability and capacity of his hands? A. I am willing to swear.

Q. When did you ever see him fold anything? A. Well, I have examined his hands, and I have examined him specially for this thing.

Q. Before or since election? A. After the election, of course.

Q. How long after the election? A. I cannot tell you exactly.

Q. Was it a week? A. No.

Q. Was it two weeks? A. No.

Q. Was it ten days? A. It was more than that.

Q. Was it a month? A. About a month. It might have been a month.

Q. Was it not three months? A. I do not know; it was at the time I was subpoenaed; at that time this list was given me. I was not coming here ignorant of the facts.

Q. When was that given you; can you remember without looking at it? A. No, I cannot swear. (Witness examines paper.) December 26, 1893.

Q. That is the day after our holy holiday of Christmas? A. Yes.

Q. Whom was it given to you by; you cannot remember that without looking at the paper? A. No, sir.

Q. You do not remember who gave you that paper? A. I was served with this paper.

Q. You do not know who served you; can you remember where you were when you were served? A. Yes.

Q. Where? A. In the hospital.

Q. You are sure it was the twenty-sixth of December? A. The twenty-sixth of December that I made this examination.

Q. Do you swear to that of your own knowledge, or from looking at that paper? A. You are asking a fine point.

Q. You were obliged to look at that paper to refresh your memory as to the fact that it was the twenty-sixth? A. Yes.

Q. And it is what you see on the paper that makes you swear that it was on the twenty-sixth you received the paper, is it not? A. No; that is the day it was witnessed before a notary public.

Q. That you swore to it before a notary public? A. Yes.

Q. Do you remember the circumstance of going before a notary public to swear to that paper? A. Yes.

Q. Where was that? A. At the Harbor.

Q. Who was the notary? A. Frank Jeffers.

Q. Do you remember the circumstance of signing your name and swearing to that on the twenty-sixth? A. I do.

Q. What part of the Harbor was it? A. In the hospital.

Q. Where was this man Burlingham; where was he at the time? A. He was in the Harbor.

Q. Was he present when you made the affidavit? A. No, sir.

Q. Was he present when you swore to it? A. No, sir.

Q. You say his name is Burlingham? A. Yes.

Q. Will you swear that his name is not Burlingame; will you swear that he is not the man who is an inmate, whom you have upon the list as Burlingham? A. No; I won't swear to that; I copied that from the list; his name is Burlingham.

Q. What did you copy it from? A. From the list of names.

Q. Did you ever ask him what his name was? A. I never asked him what his name was.

Q. Of your own personal knowledge you will not swear? A. I may be mistaken.

Q. You won't swear that the individual whose name appears as Burlingham—you will not swear of your own knowledge that his name is not Burlingame, will you? A. I won't swear to that; no, sir.

Q. What is his name on the official list or roll of the Harbor? A. I cannot tell you.

Q. Did you ever look at it to see? A. I cannot say that I have; I cannot swear whether it was Burlingame or Burlingham.

Q. Who gave you this list? A. I took the list of names in the — at that time I took them from the list in the governor's office.

Q. Who prepared that list? A. I sent over the names; I do not remember whether I copied them myself or not; I think I did.

Q. What seems to be the matter with your memory? A. I have a fair memory, in some respects, but this did not impress me. This is my writing, but whether I took it from the list —

Q. That is your writing? A. Yes, sir.

Q. You observe that this is solemnly sworn to before a notary public, do you? A. Yes.

Q. You knew what you were swearing to at the time? A. This paper was never used —

Q. You knew that you were swearing to the truth of the contents of that paper? A. Yes.

Q. You just said it did not impress you as being of much importance, so as to refresh your mind as to the fact where you got that list. What did you mean by that? A. To the best of my knowledge and ability I thought this was the name, that's all. I have sworn to that.

Q. Did you swear to the best of your knowledge and ability, or did you swear affirmatively and positively? A. To the best of my knowledge.

Q. Will you tell me any place there where you have sworn to anything on information and belief? A. No; I swore to it; as this list is —

Q. You swore to that affidavit positively, did you not? A. Yes.

Q. Of your own knowledge? A. Yes.

Q. Who prepared that for you? A. I prepared it; it's my writing.

Q. Who prepared that affidavit for you? A. That was sent to me before and it was never used; it was sent to me.

Q. Who prepared it for you? A. I do not know; it was sent to me by Mr. Jansen, I think.

Q. Did you read it before you swore to it? A. I did.

Q. Word for word? A. I did.

Q. Did you observe the fact that you have used this language: "That they are not unable to use their hands for ordinary purposes, or physically disabled by reason of crippled condition or disease to enter a voting booth alone to prepare his ballots without assistance, according to the provisions of section 104 of the Election Laws of the State of New York?" A. Yes.

Q. What do you know about section 104 of the Election Laws of the State of New York? A. It was given me to read.

Q. Before you signed that affidavit? A. Yes.

Q. Who gave it to you? A. I asked for it.

Q. Who gave it to you? A. I think Mr. Jansen did.

Q. Do you know? A. I think he did.

Q. Who gave it to you? A. I tell you I do not know.

Q. Where were you when you received it? A. It was sent to me at my house.

Q. Where were you when you received it? A. At my house.

Q. Who gave it to you at your house? A. It was sent to me by a messenger.

Q. Some one handed it to you? A. Yes.

Q. Who was it? A. It was a messenger, I think, from Mr. Jansen.

Q. Was it sent to you in an official document, printed, or was it in writing? A. It was in typewriting.

Q. When you swore to that affidavit, did you, as a matter of fact, or had you, as a matter of fact, at any time, prior to the time you took that affidavit, read the section that you have sworn about in the official published Session Laws of this State? A. I think I had.

Q. Do you know whether you had or not? A. I am pretty sure I had; I cannot swear to it.

Q. Where? A. As to that, I do not know.

Q. Who was present? A. I do not know.

Q. How long ago? A. I do not know.

Q. What county was it in, that you read it? A. In Richmond county, I suppose.

Q. Do you know whether it was Richmond county? A. Yes.

Q. How do you know? A. Well, that is a question I do not know how to answer.

Q. Where were you when you read it? A. I do not know.

Q. What kind of a book did you read it out of? A. I do not know.

Q. Was it a calf bound volume or a paper bound volume? A. I do not know.

Q. You have no recollection? A. I have not.

Q. Now, getting back to the question, to illustrate to you—this is somewhat the form of a ballot, only larger. (Counsel illustrating with a piece of paper.) Did you ever see this man Burlingham or Burlingame, whatever his name may be, undertake to fold up a paper as that is folded? A. I was not an inspector.

Q. I did not ask you whether you were an inspector or not.

Did you ever see him undertake to fold up such a paper? A. No, I did not.

Q. What paper, if any, did you ever see him attempt to fold up, to use his fingers naturally for folding up? A. I have not seen him fold any.

Q. What act did you ever see him perform with his fingers that enabled you to swear that he was capable and had the ability to fold a ballot and to enter a voting booth alone within the provision of section 104 of the Election Laws of the State of New York?

A. I examined both his hands —

Q. One moment, prior to this date —

Mr. Kiendl—I submit that the witness should not be interrupted in the midst of his answer.

The Chairman — The witness may answer categorically, if he is able to.

A. Prior to election day I never examined his hands particularly.

Q. You never saw him attempt to fold anything prior to that date? A. No, sir.

Q. You were not acquainted with the condition of his hands from actual demonstration or observation prior to election day?

A. Yes.

Q. From an inspection of his hands? A. No; not inspection.

Q. The first and only time you inspected his hands, to see whether he was capable of exercising his hands to fold a ballot and to vote, as you say he could do, was subsequent to election day, was it not? A. It was.

Q. And not before? A. No, sir.

Q. Now proceed to the next name on that list? A. W. H. Britto.

Q. I understand that you examined the first individual some time in December last, that you testified to? A. Yes.

Q. How long have you known Mr. Britto? A. Ever since he has been in the institution.

Q. How long has he been in the institution? A. He may have been there about two years.

Q. Has he been there more or less? A. I cannot tell you.

Q. Why cannot you tell me? A. Because I do not remember when he was admitted.

Q. Will you swear that he has been there eighteen months? A. No; I won't swear to that.

Q. Will you swear positively that his name is Britto? A. Yes.

Q. And that that is the name on the books? A. Yes.

Q. Did you ever examine the official record of the Sailors' Snug Harbor to see if that is his name? A. That is the name that I have known him by, and on my list, indexed from the governor's office; I know that to be his name.

Q. The list that you refer to is the same in character and as to names as the one that you have before you, is it not? A. As far as I know, yes.

Q. Did you ever personally transcribe the names of any of these individuals from the official list of the Sailors' Snug Harbor, of names to this or any other paper? A. I transferred it from a list that was given to me.

Q. By whom? A. From the governor's office; I think it was given to me by one of the clerks.

Q. What is his name? A. I think Mr. Cox.

Q. Don't you know? A. No; I am not positive.

Q. You don't know who gave it to you? A. No; or it might have been another person; I do not remember now.

Q. Will you swear that this man's name whom you term Britto is not Britton? A. Yes, sir.

Q. You will swear to that positively? A. Yes, sir.

Q. And you will swear positively that his name does not appear on the official journal or register of the names of the Sailors' Snug Harbor as Britton? A. Not this man; no, sir.

Q. Can you tell this committee what election district this man, whom you term Britto, is a member of; whether the eighth or ninth? A. I am not positive.

Q. You do not know? A. No.

Q. Did you ever see Mr. Britto, or Britton, or whatever his name may be, cast a ballot? A. No, sir.

Q. Did you at any time prior to election day last November see him attempt to fold a paper similar in form and character to an official ballot? A. No, sir.

Q. Do you know what the character of an official ballot is in appearance? A. Somewhat.

Q. Do you know it is first folded lengthwise up to the creased point across the ballot, and then crosswise, so that the coupon may be torn off from the top? A. Yes.

Q. Did you ever make any examination of Britto, or Britton, or whatever his name may be, physically, prior to election day? A. No, sir; not in that respect.

Q. You never made that examination to ascertain whether he was capable of exercising the act of casting a ballot as described until December following the election? A. No, sir.



Q. Is it not a fact that men in advanced age may at times be so incapacitated by reason of chronic rheumatism from using their hands, largely for the purpose of folding a paper or any other article of that kind? A. It is.

Q. How old is that man Britto that you speak of? A. A man about sixty years old; say fifty-five or sixty years.

Q. Troubled with any defects that you know of? A. No, sir; of course, he is troubled with defects, or he would not be there.

Q. Is he lame? A. No, sir.

Q. Is he afflicted with any chronic disease? A. He has some heart trouble.

Q. Will you swear that he is not a man who suffers intermittently from attacks of chronic rheumatism? A. Yes, I think I could.

Q. Will you? A. No; I am not going to, without —. You compliment me highly, but I can not carry all these cases in my mind.

Q. Then you are not prepared to swear that this man is not the victim of intermittent rheumatism? A. No, sir; I am not.

Q. Of your own personal knowledge you are not prepared to swear that at the time that he cast a ballot at the election held in November last, he was capable or incapable of the physical ability to cast that vote, from your own personal knowledge, under your oath. You are not prepared to swear to that are you? A. I am not prepared to swear on any such statement as that, of course.

Q. Now proceed to the third name. What is it? A. C. S. Brown.

Q. Is that No. 1 or No. 2; or is there only one? A. There is only one C. S. Brown.

Q. How old is he? A. I do not know.

Q. How old do you think he is? A. I should say a man about sixty-five; I cannot tell you; it is not a question that I am supposed to know—the ages of all these men. A great many of these men it is impossible to give their age; most of them are not hospital patients.

Q. What is the initial of that name C. Brown? A. C. S. Brown.

Q. Do you know what his name is? A. I think it is Charles S. Brown.

Q. Are you prepared to swear that in that institution there is not a Charles Brown and a Charles S. Brown both, that there was not on last election day? A. I am not prepared to swear that at all.

Q. As to this Charles S. Brown in question, you believe him to be Charles S. Brown? A. Yes.

Q. Did you, prior to last election day, make any personal examination of the hands or fingers of C. S. Brown, to satisfy yourself whether he had the ability or not to enter an election booth and deposit his ballot without assistance, under the provisions of section 104 of the laws—Election Laws—of the State of New York? A. I won't swear to that.

Q. You did not examine him; and the first personal examination you made of him was in the following December? A. I did not make a general examination.

Q. Did you ever, subsequent to election day, make a personal examination of the hands of C. S. Brown? A. No, sir.

Q. You have never made it? A. No, sir.

Q. Then, of your own personal knowledge, you did not know on the day he voted, nor from your own personal knowledge or observation have you known at any time since, whether or not he was capable of exercising his ability as a voter, without assistance on election day last, from your own personal knowledge? A. Prior to this examination?

Q. Yes. A. No.

Q. When did you examine him? A. All these men were—mostly I saw them at the same time.

Q. I asked you if you ever at any time examined this man Brown, and you said you did not. A. I said except at this time.

Q. You did examine him? A. I did examine him, as I did the rest of these men.

Q. I did not want that; strike that out; you examined him in the following December; what district was he a resident of? A. I do not know.

Q. You cannot tell whether he was a resident of the eighth or ninth? A. I do not know.

Q. You did not know whether he voted or not, did you? A. I have no knowledge of his voting at all, sir.

Q. You have spoken of C. S. Brown, and identified him in your mind as Charles S. Brown; can you enlighten the committee upon a certain individual named Brown, as Charles Brown, who was there upon election day? A. No.

Q. You have no recollection of him? A. No.

Q. You are not prepared to swear that he was there? A. No, sir.

Q. He may have been there? A. I do not know.

Q. What is the next name? A. Andrew Bacher.

Q. How long have you known Andrew Bacher? A. Six or seven years.

Q. Has he been an inmate of the Harbor during that time? A. Yes, sir.

Q. How old is he? A. A man about seventy.

Q. Has he any trouble? A. Yes; he has an artificial leg.

Q. Prior to election day last, did you ever make any personal examination of Mr. Bacher to ascertain whether or not he was capable of exercising his powers to enter an election booth and vote without assistance, according to the provisions of section 104 of the Election Laws of the State of New York? A. No, sir.

Q. You did not? A. No, sir.

Q. And the first time you made any examination of him in reference to that ability was in December following the election? A. Yes, sir.

Q. About the twenty-sixth of December? A. Yes, sir.

Q. Who is the next person upon that list? A. I. F. Chase.

Q. What is his first name in full, if you know? A. Isaiah.

Q. How old is he? A. Man about seventy.

Q. How long have you known him? A. I have known him five or six years.

Q. He has been an inmate of the Harbor during this time? A. Yes.

Q. Has he any chronic disability? A. He has chronic bladder trouble, etc.; nothing to do with his hands and arms.

Q. Tell me what the chronic trouble is? A. Do you wish to know? He has stricture of the uretha and chronic cystitis.

Q. Has he any intermittent trouble other than that? A. Nothing.

Q. You do not know whether he voted on last election day or not? A. No, sir.

Q. Never prior to that time or since have you seen him or either of the others you have testified to, undertake to fold a ballot or a piece of paper similar to a ballot? A. No, sir.

Q. You never saw him vote? A. No, sir.

Q. Try to vote? A. No, sir.

Q. You never saw him try to fold a ballot? A. No, sir.

Q. So as to know whether he could use his hands without assistance? A. Not prior to that time.

Q. The first examination you made of him was on or about the twenty-sixth day of December, following election? A. Yes, sir.

Q. And is not that the fact in reference to the next one — call his name? A. My answer is the same to all of them.

Q. What is the next name upon the list? A. J. Coventry.

- Q. What is his full name? A. Joseph, I think.
- Q. You are not sure? A. I am not sure.
- Q. It may be John or James? A. I think it is Joseph.
- Q. How long have you known him? A. I have known him four or five years, I think, anyway.
- Q. You are not sure of that? A. I am not sure of that.
- Q. It may have been only three years? A. No; it is more than three years.
- Q. You won't swear that it is four? A. No; I would not swear to it.
- Q. Where did you first become acquainted with him? A. He came into the institution as an inmate.
- Q. How old is he? A. A man about seventy-five.
- Q. Has he any chronic trouble or disease? A. He has the condition of old age, senility approaching; a feeble-minded man.
- Q. But he has intelligence enough to exercise the ordinary powers of discerning when he undertakes to vote, has he? A. Physically, yes.
- Q. I did not ask you that. A. I do not suppose a man would vote mentally.
- Q. I have not said anything about their mental condition. A. Physically, he has the ability to fold a ballot.
- Q. I ask you for your opinion, as an expert, whether he had the mental capacity to judge what a ballot was, or a piece of paper, so as to fold it? A. No, sir; I do not think he has.
- Q. Did you ever test him upon that subject? A. Yes; he is a patient of mine.
- Q. Did you ever test him prior to last election? A. Not upon this particular subject.
- Q. Did you ever ask him after election for whom he voted? A. I did not.
- Q. Do you know whom you voted for? A. I think I do; I think that is a personal question, however.

Mr. Kiendl—I object to that as immaterial.

The Chairman—The question is answered.

Mr. Mullen—Doctor, are you prepared to swear that this last-named individual had not been, prior to last election, subject to intermittent attacks of rheumatism or other complaints or diseases, which would temporarily incapacitate him from the free and undisturbed use of his hands, fingers, etc.? A. No, sir.

Q. You are not prepared to swear to that? A. No.

Q. You never saw him undertake to fold a ballot, or ticket, or paper before election? A. No, sir.

Q. And you never made any examination of him to ascertain his physical ability to enter a booth and vote without assistance under the provisions of section 104 of the laws, Election Laws, of the State of New York, until on or about the twenty-sixth day of December last, did you? A. No, sir.

Q. What is the next name you find there? What is W. Clark's second name, W. Clark No. 2? A. I don't know.

Q. You do not know whether it is William, or Walter, or Washington? A. No, sir.

Q. Are you prepared to state that this is the way his name is written upon the list of names on the books? A. I am not.

Q. Can you recall now the name of the clerk who furnished you with that copy of the list? A. No, sir.

Q. How many clerks are there in that institution to whom you could have applied at that time to furnish you that list? A. Only one. The governor has a secretary and a clerk, and whether it was that clerk or the clothing clerk, who does some writing for him sometimes, I am not prepared to state.

Q. Some one around the institution furnished you with that list? A. Copied it from the list at my request.

Q. You were not present? A. No.

Q. You never compared it with the official list to see if it was right? A. No.

Q. How old is that last man you mention? A. I do not know.

Q. How old would you think he is, to the best of your judgment? A. I don't know.

Q. Fifty? A. I cannot tell you.

Q. Do you recall the characteristics or appearance of the man at all? A. No; not No. 2.

Q. You don't remember him at all? A. No.

Q. He may have been ninety, or he may have been thirty-five, for all you know? A. Hardly thirty-five.

Q. Fifty-five then? A. I don't know.

Q. You haven't the individual in mind at all at the present time? A. No, sir.

Q. You never examined him to know what his physical condition was prior to election? A. No, sir; not before.

Q. Have you examined him since election? A. No, sir; not except at the date —

Q. Answer the question? A. When I examined the other men.

Q. I am speaking of this individual, and not the other men.

Q. Do you, of your own personal recollection and knowledge, and are you prepared to swear that you ever examined this man, either before or subsequent to election to ascertain his physical ability to fold a ballot and exercise his rights as a voter without assistance? A. I am.

Q. When did you examine him? A. At the same time I examined the others.

Q. If you examined him at the same time that you examined the others that you have mentioned here, why have you testified here that you are unable to recall the identity or characteristics of the person in question? A. Because there are several Clarks; there must be six or eight Clarks; No. 2 does not come to me.

Q. Is that your only explanation? A. That is my only explanation.

Q. Now, while you are under oath as a witness on the stand, you have no personal knowledge or recollection of the individual in question, have you? A. I cannot call him to mind.

Q. What is the next name? A. J. Cass.

Q. Is that J. A. Y. Cass? A. J. Cass.

Q. What is his name? A. I do not know.

Q. Do you know whether it is John or James? A. I don't know.

Q. Do you now recollect the identity of the individual? A. I remember Cass.

Q. How old is he? A. A man about sixty.

Q. How long has he been in the institution? A. Several years; I don't know how long.

Q. Give us an idea? A. I cannot tell you.

Q. Five years? A. I don't know.

Q. Four years? A. I don't know.

Q. Three years? A. More than that.

Q. You won't swear it has been over four years? A. No.

Q. You judge he is about sixty years old? A. Yes.

Q. Has he any chronic trouble? A. Yes.

Q. What is its nature? A. Liver, kidneys.

Q. Is it not a fact, pathologically, that a man who has chronic troubles with the kidneys and liver, it frequently results in intermittent attacks of rheumatism? A. No, sir; not necessarily.

Q. Is it not a fact that it frequently does occur from this cause? A. Not directly, sir.

Q. That with other causes? A. Not necessarily.

Q. I am not speaking of the imperative case. I am speaking of what may occur. A. He may have rheumatism in combination with these things.

Q. That combination may induce that condition of intermittent attacks of rheumatism, may it not? A. Yes.

Q. Did you ever examine this last individual prior to election to ascertain what his physical ability was to use his hands in folding a ballot and exercising his right to franchise in casting that ballot without or with assistance, under section 104 of the Election Laws of the State of New York? A. No, sir.

Q. And the only examination, if any, that you ever made of him was on or about the twenty-sixth day of December subsequent to election? A. Yes, sir.

Q. Do you at the present time recall the identity and personality of the man in question? A. Yes.

Q. Do you remember the circumstance of examining him? A. Yes.

Q. Do you remember how it was done; do you remember where it was done? A. Yes.

Q. Who was present when you made that examination? A. I don't know that any one was present.

Q. Can you tell use in what election district he resided? A. No, sir.

Q. What is the next name? A. E. H. Cook.

Q. Do you remember his name in full? A. I do not.

Q. How long have you known him? A. I don't know.

Q. About how many years? A. I don't know.

Q. Can you give us an approximate idea of the number of years that you have known him? A. No.

Q. Ten years? A. It would be mere guess-work.

Q. How long have you been in the institution? A. Eleven years.

Q. Give us your best idea how long this man has been there? A. I have known him a year.

Q. That is all you are willing to swear to, is it? A. Yes.

Q. Have you treated him for any chronic disease? A. Nothing particularly.

Q. I am not asking anything particularly. A. I do not remember anything about his case particularly.

Q. From the light and knowledge that you have of his physical condition, you are unable to swear as to what his physical condition is, are you not? A. Yes, at present.

Q. And you never made any examination of his physical condition or capacity to cast a vote without assistance, under the provisions of that section 104 of the Election Laws, prior to the last election? A. No, sir.

Q. Do you recall whether you have examined him since that time?  
A. At this time I speak of; about December twenty-sixth.

Q. You think you examined him about December twenty-sixth?  
A. Yes.

Q. Are you able to state, from present recollection, the fact and occasion of examining him at that time, this particular case?

A. Nothing more than that I am positive that I examined him.

Q. Did you ever see him undertake to fold a paper in the form of a ballot? A. No, sir.

Q. Never saw him undertake to fold any paper? A. No, sir.

Q. To see whether he could feel or handle it or not? A. No, sir.

Q. And of your own personal knowledge you never saw him attempt to vote? A. No, sir.

Q. And of your own personal knowledge and observation of the individual, you are not prepared to state positively that this man was not incapable of exercising his physical abilities on election day last, without assistance, when he undertook to vote, are you?

A. No, sir.

Q. What is the next name? A. W. Daly.

Q. Do you recall his name in full? A. No, sir.

Q. How long have you known him? A. I do not know, sir.

Q. Can you give us any idea of the length of time; is it a year?  
A. It is certainly a year.

Q. About a year? A. Yes, sir.

Q. That is the best of your recollection, is it? A. Yes.

Q. About how old a man is he? A. That I am not prepared to say.

Q. In your opinion, how old is he? A. I don't remember.

Q. Do you recall the identity of the individual at all now? A. I do not.

Q. You are not prepared to swear whether he is ninety years old, or fifty years old, are you? A. No, sir.

Q. You cannot recall him at all? A. No, sir.

Q. You never examined him as to his physical condition prior to election last? A. No, sir.

Q. You never saw him undertake or attempt to fold a ballot or anything similar at any time to see whether he could do it or not, without assistance? A. No, sir.

Q. So far as his particular case is concerned, you think that you gave him an examination as to his physical condition and ability on the twenty-sixth day of December, but you are not sure of it, are you? A. Yes.



Q. You are sure of it, why? A. Because his name appears upon the list of men; upon this list, as I said before.

Q. In the case of the individuals whom you have mentioned as having been examined by you on the twenty-sixth day of December last, as to their physical condition and ability to use their hands, did you, in the case of any of these men, ask them to fold a ballot in your presence? A. No, sir.

Q. To see whether he could do it or not? A. No, sir.

Q. You did not? A. No, sir.

Q. And of your own personal knowledge, you are unable to state whether or not any of the men you have mentioned were able to fold a ballot and deposit it, under the provisions of section 104 of the Election Laws, on last election day? A. Do you mean by examination on election day?

Q. On election day? A. I cannot swear to that.

Q. Now, what is the next name? May I ask the chairman how long the committee intends to continue the session this afternoon?

The Chairman — We will see what progress is made. I think until five o'clock, at least.

Q. What is the next name? A. Richard Comstock.

Q. How long have you known Richard Comstock? A. Three or four years.

Q. You have known him as an inmate during that time? A. Yes.

Q. Is he troubled with any chronic physical disability? A. Yes.

Q. What? A. Bladder and urethral troubles.

Q. Are you prepared to swear that he was not at any time subject to intermittent attacks of rheumatism up to and including election day? A. Yes; never treated him for that.

Q. You say he had been treated for it? A. No.

Q. Are there any causes that will cause inability to use the hands other than rheumatism? A. Paralysis.

Q. Palsy? A. Paralysis.

Q. And palsy? A. Yes — no; I don't think that would interfere altogether.

Q. What will superinduce paralysis? A. Some brain lesions.

Q. What else? A. All paralysis is directly from the brain.

Q. Is it not a fact that paralysis may be induced from diseases affecting the coatings of the nerves? A. Paralysis is central in the brain.

Q. When you say central, you mean it comes from one point, and that is the brain, leading from the brain? A. Yes; or from the spinal cord.

Q. Would the disease that man was suffering from, or could it have a tendency to superinduce paralysis or partial paralysis?

A. We have never had it.

Q. I ask you could it? A. He might have paralysis.

Q. And you are not prepared to swear that he did not have paralysis on election day last, are you? A. Yes.

Q. Did you examine him on election day? A. No; but I know if he had, he would have the after symptoms of it; if a man once has paralysis, it is not common that he should recover thoroughly after that, in so short a time as that, anyway.

Q. He will recover temporarily, will he not? A. Not thoroughly.

Q. I am speaking of temporarily, so that there will be no vestige of it? A. No, sir.

Q. Of your own personal knowledge, you are not prepared to swear whether or not this man was capable of exercising his ability and casting a ballot, and to prepare it, according to the provisions of section 104 of the Election Laws of the State of New York on election day last? A. No, sir.

Q. And the first time that you made any examination of that man to ascertain his physical ability to cast a ballot was on or about the twenty-sixth day of December last? A. Yes, sir.

Q. Have you his identity in mind now, his particular case? A. Yes, I know him.

Q. And you recollect the fact of making his examination? A. Yes.

Q. Did you upon that occasion test him to see whether he could fold a ballot, or a paper similar to a ballot? A. No, sir.

The Chairman — I will suggest to the counsel that that precise question could be asked in a general way in reference to all the persons the witness has mentioned, in order to save time. I would suggest whether you may not ask this general question or questions which you repeat in each case, and which manifestly will receive the same reply from the witness, in order to facilitate the examination.

Mr. Mullen — Not necessarily, Mr. Chairman. Some of these people he has not present recollection of at all. I will ask two general questions.

Q. Doctor, of all the persons whose names appear upon that list which you have read off before cross-examination, had you made an examination as to the physical condition of either of them prior to election day last year? A. No, sir.

Q. You had not? A. No, sir.

Q. And are you able to state, under oath, that either of these

individuals whose names are contained upon this list was capable of exercising freely their physical ability to enter a voting booth alone and to prepare his ballot without assistance, according to the provisions of section 104 of the Election Laws, or any other law, from your own personal knowledge? A. No, sir.

Q. And of the persons whose names are contained upon that list, you made a personal examination of all of them on or about the twenty-sixth of December last, to ascertain what their physical condition was on that day; that is a fact, is it not? A. Yes, sir; physical condition in regard to their ability to vote.

Q. In regard to their ability to vote — to use their hands to fold a ballot or to exercise the power of voting? A. Yes.

Q. Did you, during the examination of either of these individuals on the twenty-sixth of December, subsequent to election, ask any of them to fold a ballot or any paper that bore a semblance to a ballot to enable you to judge whether or not they were capable, or either of them was capable, of folding a ballot upon that date? A. No, sir.

Q. Is it not a fact that in some cases an individual suffering from rheumatism, or incipient paralysis, or incipient paresis, may be unable to perform an act to-day without assistance, which three months hence he will be able to, by reason of the changed conditions in his physical ability to perform that act without assistance? A. It is possible.

Mr. Mullen — That is all.

Mr. Kiendl — I offer in evidence the affidavit the doctor has been examined from.

Mr. Mullen — I have no objection. It may be marked, so that it may be laid before the committee, but it is no evidence of any fact.

The paper referred to marked "Exhibit L."

Redirect-examination by Mr. Kiendl:

Q. Are either of these men you have testified to, or were they, in the hospital under treatment at the time of the election, November seventh? A. At the time of the election?

Q. Yes. A. Coventry.

Q. Was he suffering from rheumatism or anything of that kind at that time? A. Senility.

Q. Would that in any manner affect him in folding a ballot? A. Not physically, at all.

Q. Were either or any of these men that you have mentioned suffering from any disease that would prevent them from folding a

ballot or from voting on election day? A. You are speaking of hospital cases?

Q. To their treatment in any way? A. In the hospital do you mean, of the list we have here?

Q. Yes.

Mr. Mullen — He means of the certain names that he repeated to you.

Witness — I understand.

The Chairman — The names upon the list.

The Witness — They were not.

Recross-examination by Mr. Mullen:

Q. Will you state to the committee how many of the individuals whose names are upon that list were in the hospital on election day, as inmates, unable to leave, if any? A. Do you wish the names?

Q. Yes. A. Coventry was one; Comstock is two —

Q. Now, one moment, did you see Coventry in the hospital on election day, the seventh of November? A. Yes; I suppose I did.

Q. I want to know if you did? A. Of course, I did.

Q. Will you swear that you did see him there on election day? A. No; I won't swear to that.

Q. And of your own personal knowledge you cannot swear that he did not go out of the hospital and vote upon that day, can you? A. No; I couldn't swear whether he voted or not; I do not know anything about it.

Q. Now, the second name you mentioned? A. Richard Comstock.

Q. Do you recall seeing him in the hospital all that day? A. No, sir.

Q. And you are not prepared to say that he did not go out and vote, are you? A. No, sir.

Q. Are there any other names? A. C. Francis.

Q. And in reference to C. Francis, do you remember seeing him in the hospital all that day? A. I saw him that day; yes.

Q. What time did you see him? A. Half-past nine in the morning.

Q. Did you see him after that? A. No, sir.

Q. Was he in or out of bed when you saw him? A. He was out of bed — dressed.

Q. He was able to walk? A. Yes.

Q. And you are not prepared to say that he did not go out and vote, are you? A. No, sir.

Q. Are there any other names? A. C. C. Mirrow.

Q. As to Mirrow, is it about the same as the other men you have mentioned? A. Yes, sir.

Q. Did you examine him or any of them upon that day, as to what they were suffering from; whether they were able to vote or not? A. No, sir.

Q. The matter never occurred to you until you were asked about it on the twenty-second day of December last? A. When these names were given to me.

Q. That was the first time it occurred to you whether they were capable or incapable of exercising their faculties on election day? A. Yes.

Q. Any other names there of men who were in the hospital on election day? A. No, sir.

John J. Kenney, sworn for the contestants and examined by Mr. Kiendl:

Q. Where do you reside? A. New Brighton, Richmond county, N. Y.

Q. Are you the county clerk of Richmond county? A. Yes, sir.

Q. Have you the return of the eighth, fifth and ninth election districts of the town of Castleton? A. Yes, sir.

Q. Are they taken from your files? A. Yes, sir.

Q. These are the original returns (presenting papers to witness)? A. Yes, sir.

Mr. Kiendl — I offer them in evidence.

Mr. Mullen — I object, on the ground that it is not the original; that it appears on its face to be a copy, and is so certified by the inspector of election; that it is not the best evidence. That it is incompetent and no foundation has been laid for it.

Objection overruled and exception taken by Mr. Mullen.

Mr. Mullen — My point is that the best evidence is not the copy that was filed with the clerk prior to the canvass, but the return made by the inspectors to the board of county canvassers, from which they canvass the vote and declare the result thereof. That is not produced here; and there were corrections made in these returns by the county canvassers, and they had to adjourn for that purpose in two or three different districts. That is not evidence.

Papers referred to marked "Exhibits M. N. O."

Mr. Kiendl, resuming:

Q. Now, Mr. Kenney, will you please read the return according to the paper you hold in your hands? A. In regard to the delegates to the Constitutional Convention?

Q. What is the district you are reading from? A. The fifth, Castleton.

Q. Will you please read it?

Mr. Mullen — Is it not a fact that there were no returns made at all in that district, and they had to adjourn over the canvass and have it made? They left out the district delegates entirely, did they not, in some of these districts?

Mr. Kiendl — Is it in that return?

The Witness — It is in this return.

The Chairman — Let the clerk proceed and read the portion of the paper referred to.

A. Whole number of votes given for the office of district delegate to the Constitutional Convention, 260; of which James W. Riggs received 182; Eugene A. Curran, 182; George W. Roderick, 182; William M. Mullen, 182; Thomas W. Fitzgerald, 182; John C. Kinkel (the first name is covered over), 77; Charles L. Pashly, 77; William Deterling, 77; John Lott Nostrand, 77; Charles J. Kurthy, 77; Mathew, first, 1; Mathew, eleven, 1; Henry C. Millerlein, 1; Edward Cullen, 1; William Veek, 1.

Q. Take the next district and read that. A. Eighth election district; whole number of votes 190; of which James W. Riggs received 156; Eugene A. Curran, 156; George W. Roderick, 156; William M. Mullen, 156; Thomas W. Fitzgerald, 156; John C. Kinkel, 30; Charles L. Pashley, 30; William Deterling, 30; John Lott Nostrand, 30; Charles J. Kurthy, 30; Edward Cullen, 1; Samuel Haake, 2; Alfred R. Heath, 2; Jonas W. Bliss, 2; L. A. Poole, 2; Mathew, first, 2; Mathew, eleven, 2; Henry C. Millerlein, 2; William Veek, 2.

Q. The ninth election district of Castleton? A. The whole number of votes, 273; of which James W. Riggs received 252; Eugene A. Curran, 252; George W. Roderick, 252; William M. Mullen, 252; Thomas W. Fitzgerald, 252; John C. Kinkel, 20; Charles L. Pashly, 20; William Deterling, 20; John Lott Nostrand, 20; Charles J. Kurthy, 20; Mathew, first, 1; Mathew, eleven, 1; Henry C. Millerlein, 1; Edward Cullen, 1; William Veek, 1.

Cross-examination by Mr. Mullen:

Q. Now, Mr. Kenney, the papers that you have produced here to-day, and which are marked "Contestants' Exhibit N and Exhibit O," will you be kind enough to state to the committee if these are the exhibits or the returns from which the board of canvassers made the canvass and declared the result from the districts herein mentioned?

Mr. Kiendl — I object to that as immaterial.

The Chairman — He may state.

The Witness — I was not county clerk of Richmond county at that time, but I know it is the duty of the board of canvassers to canvass the vote —

The Chairman — You need not state that.

Mr. Mullen — Are there any other returns from that district on file in your office as having been used by the board of county canvassers, and from which they declared the result? A. My impression is there are other returns there that are duplicates of these.

Mr. Kiendl — I move to strike out his impression.

The Chairman — Let that stand.

Q. Are you, as county clerk, able to state from what returns in these districts, that are on file in your office, the board of county canvassers made and declared the result of the elections in these districts?

Mr. Kiendl — He has already answered that.

Mr. Mullen — He has not already answered it.

Mr. Kiendl — He has already said he did not know.

Mr. Mullen — He has said nothing of the kind.

The Chairman — He may answer the question, if he is able to do so.

The Witness — I do not know.

Mr. Mullen, resuming:

Q. Mr. Kenney, I desire to ask you to make a search in your office, to see if you can find the other and original returns from which the board of county canvassers canvassed the vote and declared the result in these districts; and I ask the committee to instruct the witness or notify him to appear here with those returns.

The Chairman — You should have produced, provided you were subpoenaed to do so, the papers that relate to these cases, I sup-

pose. Not knowing the process that was served upon you, I am unable to state that. The way to obtain these papers, if there are any others, is to subpoena the witness to produce them. If you wish a subpoena for him for that purpose, the committee will issue it to you; but if the contestants are satisfied with the papers that have been produced upon their subpoena, I do not know that it is within the province of the committee to instruct him to produce any others.

Mr. Crosby — Is there any special law governing Richmond county different from the interior portions of the State?

Mr. Mullen — Not at all. There is a return made to the county clerk, return made to the town clerk.

Mr. Crosby — The original is delivered to the supervisor.

Mr. Mullen — The original is delivered to the supervisor, and he brings that with him, and sits as a member of the board of canvassers. My contention is this — that we are entitled to the originals which were before the board of county canvassers, and used by them, and not these, because these were amended, and although they were amended and corrections made, they would not appear in these copies.

The Chairman — We will issue a subpoena to you requiring the witness to produce them.

Mr. Kiendl — Mr. Kenney, your subpoena called for the original returns? A. Yes, sir.

Q. And these you produce under that subpoena? A. Yes, sir.

Q. All the returns that are filed are printed on the same presses?

The Chairman — I think the committee understand just what the papers are that are produced. If there is any reason for having the others, we will send for them.

The Witness — I do not know that I have the others; I know we have these.

William D. Gillard, sworn for the contestants, and examined by Mr. Kiendl:

Q. Mr. Gillard, where do you reside? A. New York city.

Q. What is your business? A. Attorney-at-law.

Q. Are you employed in an office? A. I am.

Q. Whereabouts? A. 189 Broadway.

Q. Did you examine the registry lists of the fifth district of the town of Castleton in the office of the county clerk of Richmond county, N. Y.?



Mr. Mullen — I object to that as incompetent, irrelevant, immaterial, and not the best evidence.

Objection overruled, and exception taken by Mr. Mullen.

A. I did.

Q. What did you find from the examination of these returns?

A. Do you mean the returns of the ballots?

Q. Yes; what did you find from such examination?

Mr. Mullen — I object to it as incompetent, irrelevant, immaterial, and not the best evidence. They must produce the returns themselves.

The Chairman — Do you intend to prove the contents of these returns?

Mr. Kiendl — What I want to show by the witness is this, that the return of the ballots found there run from a certain number to a certain number.

Mr. Mullen — Produce your ballots.

Mr. Kiendl — If we did that, we would have to produce all the undestroyed ballots in the possession of the county clerk. I want to show that he examined the returns, and found them there, a certain number to a certain number, thus showing that there were a number, about twelve to fifteen, unaccounted for, returned or should have been returned, in accordance with that return.

Mr. Mullen — You cannot prove a case in this way.

Mr. Kiendl — It is a personal examination made by the witness.

Mr. Mullen — He is not in possession of these records; he does not know whether they were official or not.

The Chairman — The committee will take the testimony of the witness for what it is worth.

Mr. Kiendl, resuming —

Q. You made this examination under an order of the court, did you not?

Mr. Mullen — I object to that as not the best evidence.

Mr. Kiendl — I want to show that he made the examination in conformity with an order of the Supreme Court.

Mr. Mullen — Produce your order, then.

The Chairman — The witness may answer the question. A. I did.

Mr. Kiendl — You were authorized under that law, you say, to make such examination? A. I was.

Q. And you made it? A. I did.

Q. When did you make that examination? A. On the 28th day of December.

Q. What did you find on such examination? A. I found certain packages of ballots which were opened by the deputy of the county clerk in my presence, and I made certain memoranda of the contents of these packages in reference to certain districts, the ninth and fifth of Castleton, particularly.

• Q. What number of ballots did you find contained in the ninth Castleton district?

Mr. Mullen — I object, unless he produces his memorandum made at the time.

Overruled, and exception taken by Mr. Mullen.

A. In the ninth?

Q. Yes, sir. A. I found the unused ballots returned, from No. 259, being the lowest, to 800, the highest number.

Q. Was that package marked with any particular mark upon it, the ninth? A. It had certain marking, designating it as belonging to the ninth district.

Mr. Mullen — It is understood that we object to all of this testimony.

Mr. Kiendl — Did you find any spoiled ballots or broken sets? A. In the ninth district, there were five broken sets, spoiled ballots.

Q. What did you find in the fifth? A. In the fifth, besides — I found the package of unused ballots returned, numbered from 267 up. There were also returned in the fifth district, packages of unused — unvoted ballots, rather — not used, but unvoted ballots; five packages of them, corresponding to the different tickets.

Q. In the ninth, did you examine the returns as to the number of votes cast in that district? A. I did.

Q. What number were cast? A. The return was given that 278 sets had been delivered to voters, and 273 votes cast, as I remember.

Q. Did you examine the returns of the fifth district? A. I did.

Q. What did you find there as to the number of used and unused ballots? A. As I remember, 266 sets had been delivered to voters, and 260 votes cast.

Mr. Mullen — He is calling for a fact.

A. I am testifying to my recollection of the return of the ballot clerk.

Mr. Kiendl — Were there any sets marked, unused sets, or destroyed? A. I do not remember the exact marking now, with-

out referring as to what marking there was on the packages; I remember there were packages of unused sets.

Cross-examination by Mr. Mullen:

Q. What do you say your name is? A. William D. Gillard.

Q. And you are at 180 Broadway? A. I am.

Q. In whose employ? A. Van Hoevenberg & Holt.

Q. How long have you been in their employ? A. Continuously since June, 1893.

Q. Who was it sent you down to Richmond county to make these entries you have testified about? A. I was sent down at the request of Mr. Greenfield.

Q. And under the direction of Mr. Van Hoevenberg? A. No; directly under Mr. Phillips.

Q. Who was the counsel for the contestant in the Conklin and McGuire case? A. Yes, sir.

Q. The same individual? A. Yes, sir.

Q. How long were you down there examining these papers in the county clerk's office? A. A portion of one morning.

Q. Who else was present? A. Judge Stevens, Mr. Kenny, Mr. Schieren, the deputy county clerk.

Q. Is it not a fact that there were official minutes kept by the clerk upon that occasion to show just the number of votes shown to have been voted, and the returns — the number of unvoted ballots, and the number of destroyed ballots? A. What do you mean by official minutes?

Q. Did the clerk of the county keep official minutes of the results as shown there? A. Do you mean while I was making this investigation, whether he kept tally as to the investigation?

Q. Yes. A. The county clerk, Mr. Hart, simply walked in and out of the room; he was not there continuously.

Q. Did he have his deputy there? A. He had his deputy there, but he made no notes at all.

Q. You say you made a memorandum of the result of your observation upon the occasion; have you that memorandum with you? A. No, sir; not with me.

Q. What have you done with it? A. Well, I used it in testifying in the court room, before Judge Cullen, in the matter of the Assembly contest; it was then turned over, I believe, to Mr. Phillips.

Q. Are there any other contests that you have appeared in as a witness? A. I was examined before the senatorial committee.

Q. In the Sixth Senatorial District? A. I believe it is the sixth.

Q. And this is the third contest you have been a witness in?  
A. Yes, sir.

Q. In this district? A. Yes, sir.

Q. How much do you get for coming here per day to testify?  
A. I get no compensation at all; when I was subpoenaed, the usual witness fee was handed me, and mileage.

Q. You received no fee for coming here to-day? A. No, sir.

Q. You have come here voluntarily, without a subpoena? A. I should have come without a subpoena; I had a subpoena; I should have come if I had been requested, without a subpoena.

Q. Were you subpoenaed to appear here to-day? A. I was.

Q. But you would have come without it? A. Certainly.

Q. Did you ever live in the county of Richmond? A. For a short time last summer.

Q. How long? A. About six weeks.

Q. Where did you live? A. At Mr. Van Hoevenberg's house.

Q. You were not living there? A. I was there as a guest at his home.

Q. That was during vacation in the summer time? A. It was not exactly vacation; I was coming up to the city every day. It was during the summer.

Q. And your home is in New York city, is it not? A. At present, yes.

Q. And was at that time? A. Yes.

Q. Where was your home at the time you went down to Richmond county to make this investigation? A. In New York city.

Q. And made the memorandum of the result of the vote in Richmond county? A. In New York city.

Q. Where? A. 39 West Twenty-fifth street.

Q. You are married or single? A. Single.

Q. You were single at that time? A. Yes, sir.

Q. You never lived in the Sixth Senatorial District except as you have stated? A. No, except as I have stated.

Q. You have never voted in it? A. No.

Q. You never knew anything about the people in Richmond county, except what has been told you by others? A. I have been there frequently on business; I cannot say I know a great deal; I know something of them.

Q. You never witnessed an election there? A. A portion of the election of last year, November seventh, I did.

Q. In what district? A. Well, I will have to change that some-

what; I cannot say that I witnessed a portion of an election; I was present at the polling place in the fifth district, Castleton, at the close, or just after the close of the polls.

Q. You were there to serve some papers? A. Yes, sir.

Q. You were sort of general utility man about that election, to go wherever you were directed to go, in the county, and serve whatever papers, or make whatever inspection Mr. Van Hoevenberg and others wanted you to make: is that the fact? A. I was asked to go down to Staten Island that day, to be of any assistance I might be able to render.

Q. While they did not know anything in particular that they wanted you there for, they wanted you there in case you should be wanted, is that it? A. Yes, as I understood it; to serve papers and to render assistance.

Q. You state that you have appeared in three investigations; within what time have you appeared in these three investigations? A. The first, I believe, was on the twenty-ninth of December; I do not know the dates of the others.

Q. These are the only investigations you have taken part in? A. This is the third, with the exception that I was called before the grand jury in Richmond county.

Q. You were before the grand jury also? A. Yes, sir.

Q. Just take a little time and let us know where else you were in reference to election matters? A. This is the first time you have asked me any such question.

Q. Did you go before any magistrates to make any complaints? A. I have not.

Q. To make affidavits to be used for such purpose? A. No, sir.

Q. You are still in the employ of Mr. Van Hoevenberg, are you? A. I am.

Q. And you say you got no extra compensation for coming here to testify? A. I did not.

Redirect-examination by Mr. Kiendl:

Q. You say you served some papers at the fifth election district, or you were there when they were served? A. Attempted to be served.

Q. What was the character of these papers?

Mr. Mullen—I object unless they produce the papers.

The Chairman—I do not think you should prove the contents of these papers by their character.

Mr. Kiendl—I ask what they were?

The Chairman — You can hardly tell what the papers were without knowing their contents. That determines the character of the paper.

Mr. Kiendl — Did you seek admission into the polling places?

Mr. Mullen — I object to that; he was not a resident, nor a voter, nor entitled to any such thing.

Objection overruled, and exception taken by Mr. Mullen.

A. I did.

Q. Please state what you did and what took place there at that time? A. Do you wish me to say anything about the papers — how I obtained the papers?

The Chairman — What you did at that time?

A. I appeared at the door of the polling place with these papers in hand, with other gentlemen, and demanded admittance.

Q. Who else beside yourself? A. There was Mr. Louis Phillips, Mr. Van Hoevenberg and a Mr. Hayes; we demanded admittance into the polling place in order to serve these papers. We were refused admittance, and after making various attempts to obtain an entrance, we were compelled to leave without getting in.

Q. Was there anything stated there to any one about the paper — any conversation about the papers?

Mr. Mullen — I object.

Objection overruled, and exception taken by Mr. Mullen.

A. It was stated to the policeman who was stationed at the door what the nature of the paper was.

Q. What did you state? A. We stated to him that we had an order from the Supreme Court, directed to the inspectors of election of that district, and for service upon them; that we demanded admittance, and desired to go into the booth in order to serve these papers and demanded of him that he obtain an admission for us; he said he was powerless, practically; that he could not get us in, and at first positively declined to do so; later on, after repeated demands, he seemed inclined to allow us to go in if he could accomplish it; he got the door partly open so that he could speak to some one inside, and said to that party inside, whoever he was, that these gentlemen had papers from the Supreme Court, which they wished to serve, but that apparently produced no effect; the door was slammed too again; we were not allowed to go in; we called out in a loud voice to the parties inside of the polling place that we had these papers, and demanded that the door be

opened, so that we could get in and serve them; there was no intelligent response; the door was not opened, and we were not able to make the service; we finally pushed copies of the papers under the sill of the door, and called to the parties inside that we had the original of the order outside, and would show them the judge's signature if they would open the door; that about concluded the proceedings.

Mr. Mullen—I ask the chairman to take an adjournment now. I was traveling most of the night, and did not get home until about one o'clock this morning.

The Chairman—Are you through with this witness?

Mr. Mullen—I am through with this witness; yes. I would like to have this matter adjourned until to-morrow morning. I would like to get the five o'clock boat.

Mr. Kiendl—I have two witnesses here from Staten Island. Here is Mr. Hayes, and it is very inconvenient for him to come.

The Chairman—I think that it is a very reasonable request that he has made, and the committee are inclined to adjourn until to-morrow morning at ten o'clock.

Adjourned until Wednesday, May 16th, at ten A. M.

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## PROCEEDINGS.

*May 16, 1894, 10 o'clock A. M.*

Elijah Davis, sworn for the contestants, testified as follows:

Mr. Kiendl—Mr. Davis, are you a clerk in the office of the county clerk of this county? A. Yes, sir.

Q. Did you produce in court, this morning, the returns of the sixth district of the town of Gravesend, filed in your office? A. Election returns?

Q. Election returns? A. No, sir.

Q. You have not them? A. No, sir; I have not got them; I could not find them.

Q. You could not find them? A. No, sir; I have made a thorough search in the office and the bookbinder, and elsewhere, and cannot find the book.

Q. You had them, had you not, Mr. Davis, at the time of the trial of the case of Friday against Graham? A. I believe they were produced there.

Q. They were produced in court at that time? A. I think so.

Q. And since that time you have made search for them, and were unable to find them? A. Yes, sir.

Q. What indictments have you before you?

Mr. Taylor—I object, upon the ground that the indictments are immaterial to this inquiry, and no foundation has been laid to connect them in any way with this matter.

Mr. Kiendl—Against all the election officers in the town of Gravesend? I shall connect these indictments with the records of convictions in some cases, and in other cases with pleas of guilty. The indictments are, in some cases, for knowingly and wilfully, fraudulently, maliciously, unlawfully, and corruptly conspiring, confederating and suffering persons to vote who were not entitled to vote at the general election held in the town of Gravesend on the 7th day of November, 1893, which election officers, nineteen in number, have all pleaded guilty or have been found guilty. It is the highest kind of evidence.

Mr. Taylor—Every one of these indictments is for ante-election offenses, as I understand it. Not one of them refers to offenses committed upon election day.

The Chairman—The documents will show for themselves, upon inspection. They may not all stand upon the same footing.

Mr. Taylor—I object to them as immaterial to this inquiry.

The Chairman—I do not understand that the indictments are offered now. The question is, whether he has produced certain papers. He may answer that question.

Mr. Kiendl—Did you produce the indictments? A. Yes, sir.

Q. Did you find one against Richard V. B. Newton? You might read that off as you look at that. What is the one you hold in your hand? A. An indictment for oppression.

Q. Against whom? A. John Y. McKane.

Q. Any others against John Y. McKane? A. An indictment for omission against McKane, Newton, Sutherland, Stryker and Gladding, of duty under the Election Law. Indictment for oppression against Mr. Sutherland. Indictment for misconduct of registry officers, John Y. McKane, Frederick E. Bader, Benjamin Cohen and Victor Bausenwein. Misconduct of registry officers—

The Chairman—Do you propose to offer these after the list is completed, all together?

Mr. Kiendl—Yes, sir.



The Chairman—I think you had better offer them separately.

Mr. Kiendl—Then I will offer them as I go along.

Q. Take the first one, and I will offer that as we go along?

A. An indictment for oppression.

Q. Against whom? A. John Y. McKane.

The Chairman—There is no arraignment upon this indictment.

Mr. Kiendl—No; I have got all the proceedings in court.

The Chairman—Upon this particular indictment—were there any proceedings had upon this particular indictment? There is no indorsement whatever.

Mr. Kiendl—Then I think we had better suspend with Mr. Davis for the time being.

Mr. Taylor—I would suggest that the gentleman prove his allegation by the witness instead of by his own statement.

The Chairman—It is a mere question now of the introduction of these documents.

Mr. Taylor—I object to them as immaterial to this inquiry. There is no evidence connecting them with any illegal vote.

The Chairman—We do not think we will receive this indictment now.

Mr. Kiendl—I will suspend with this witness for the present.

John Furman, being duly sworn for the contestants, testified as follows:

Mr. Kiendl:

Q. Mr. Furman, what is your business? A. An officer of the Supreme Court.

Q. What is that book that you hold? A. That is a record of the Supreme Court.

Q. Does that contain the record of the Court of Oyer and Terminer? A. Yes, sir.

Q. And that was brought from your office? A. I was sent here with it by Gerard M. Stevens, chief clerk of the Supreme Court.

Q. That is the original book of entry, is it? A. Yes, sir.

Mr. Kiendl—Now, Mr. Commissioners, I offer in evidence this record, the January term, 1844.

Mr. Taylor—I do not think there is any evidence before the court that that is the official record.

The Chairman—We think it is sufficiently proved; that the identity of the book is sufficiently established.

Mr. Taylor — I want my objection entered, that it is incompetent.

Mr. Kiendl — It is the minutes of the Court of Oyer and Terminer of Kings county. It is not paged. It is the January term of 1894.

Mr. Taylor — I object to the counsel reading anything from the record. I object to anything being introduced in regard to this record, for this reason, and I want my objections noted, that there is no evidence before the committee to show that this is the record. There is nobody to testify as to whose handwriting it is made in. It appears to be a blank with considerable writing in it, without numbering or date, and there is no evidence to show that this is a record kept officially by the Court of Oyer and Terminer of this county.

The Chairman — We overrule the objection.

Mr. Taylor — I take an exception, and I object on the further ground that it is irrelevant and immaterial.

The Chairman — That we can only determine after knowing what the evidence is.

Mr. Kiendl — I offer in evidence a portion of this book, commencing with The People of the State of New York against John Y. McKane, Richard V. B. Newton, Kenneth Sutherland, Charles Morse, John W. Murphy, Morton Morris, John H. Brownhill, Michael P. Ryan, William Lyons, Conrad Steubenbord, Frederick E. Bader, Benjamin Cohen, Victor Bausenwein, Garrettson Morris, Patrick H. Tighe, Washington I. Tuttle, John M. Cunliffe, William H. Stewart, Frank T. Clark, Nicholas J. Johnson, Harlan Crandall and James W. Cropsey.

The Chairman — Is the book numbered?

Mr. Kiendl — It is simply called the minutes of the Court of Oyer and Terminer; there is no number.

The Chairman — What is the date of the entry?

Mr. Kiendl — The first date is "February Term, 1894," on one page, and "January Term, 1894," on the other. It seems to skip. It is not paged. I read up to page marked April 9, 1894, containing the entry, The People of the State of New York against John H. Brownell, and the final order there, "Ordered: That the undertaking of bail given by said defendant, John H. Brownhill, be, and is, discharged, and the sureties therein be, and the same are, hereby exonerated and discharged from all liability." That is the last entry that I offer.

The Chairman — What does this record consist of?

Mr. Kiendl—It reads as follows: R. V. B. Newton, justice of the peace, town of Gravesend, which said complaint was in each and every respect false, perjured and untrue, and being arraigned, pleaded "Not Guilty," was tried and convicted, and upon the 26th day of March was sentenced to be imprisoned in the penitentiary of the county of Kings for the term of one year and six months. Richard V. B. Newton, Charles Morse, John W. Murphy, Morton Morris, John H. Brownhill, Michael P. Ryan, William Lyons, Conrad Steubenbord, Jr., Frederick E. Bader, Benjamin Cohen, Victor Bausenwein, Garrettson Morris, Washington I. Tuttle, John M. Cunliffe, Nicholas J. Johnson, Harlan Crandall and James H. Cropsey were indicted for conspiracy, in having, at the town of Gravesend, on the 21st day of October, in the year 1893, and thereafter, until the 8th day of November, 1893, the said Richard V. B. Newton being a justice of the peace in and for said town of Gravesend, duly sworn, qualified and acting as such; and the said Charles Morris being the collector of taxes of said town, being duly sworn and qualified, and acting as such; and the said John W. Murphy, Martin Morris and John H. Brownhill, being inspectors of election in and for the first district of said town, duly sworn, qualified and acting as such; and the said Michael P. Ryan, William Lyons, Conrad Steubenbord, Jr., being inspectors of election in and for the second district of said town, duly sworn, qualified and acting as such; and the said Frederick E. Bader, Benjamin Cohen and Victor Bausenwein, being inspectors of election in and for the third district of said town, duly sworn, qualified and acting as such; and the said Garrettson Morris and Washington I. Tuttle, being inspectors of election in and for the said fourth district of said town, duly sworn, qualified and acting as such; and the said John M. Cunliffe and William H. Stewart, being inspectors of election for the fifth district of said town; and the said Nicholas J. Johnson, Harlan Crandall and James H. Cropsey, being inspectors of election in and for the sixth district of said town, duly sworn, qualified and acting as such, fraudulently, maliciously and corruptly conspired, confederated and agreed together to commit a crime, namely, in having knowingly and wilfully, fraudulently, maliciously, unlawfully and corruptly conspired, confederated and agreed together to permit and suffer persons to vote who were not entitled to vote at the general election held in the said town on the 7th day of November, 1893, and being arraigned, Richard V. B. Newton pleaded guilty, and upon the 22d day of March, 1894, was sentenced to be imprisoned in the penitentiary of the county of Kings

for the term of nine months, and to pay a fine of \$500, and in addition to the aforesaid term of imprisonment, to be confined in the penitentiary until said fine be satisfied, not exceeding 500 days; and being arraigned, Charles E. Morris pleaded guilty, and was upon the 28th day of March, 1894, sentenced to be imprisoned in the penitentiary of the county of Kings for the term of six months; and being arraigned, John W. Murphy pleaded guilty, and on the 27th day of March, 1894, was sentenced to be imprisoned in the penitentiary of the county of Kings for the term of three months; and being arraigned, Morton Morris pleaded guilty, and on the 27th day of March, 1894, was sentenced to be imprisoned in the penitentiary of the county of Kings for the term of three months; and being arraigned, John H. Brownhill pleaded guilty, and on the 27th day of March, 1894, was sentenced to be imprisoned in the penitentiary of the county of Kings for the term of three months; and being arraigned, Michael P. Ryan pleaded guilty, and on the 27th day of March, 1894, was sentenced to be imprisoned in the penitentiary of the county of Kings for the term of six months and to pay a fine of \$500, and in addition to the aforesaid term of imprisonment to be confined in the penitentiary aforesaid until the fine aforesaid be satisfied, not exceeding 500 days; and being arraigned, William Lyons pleaded guilty, and upon the 27th day of March, 1894, was sentenced to be imprisoned in the penitentiary of the county of Kings for the term of four months; and being arraigned, Conrad Steubenbord, Jr., pleaded guilty, and upon the 27th day of March, 1894, was sentenced to be imprisoned in the penitentiary of the county of Kings for the term of three months; and being arraigned, Frederick E. Bader pleaded guilty, and on the 27th day of March, 1894, was sentenced to be imprisoned in the penitentiary of the county of Kings for the term of five months, and to pay a fine of \$500, and in addition to the aforesaid term of imprisonment to be confined in the penitentiary aforesaid until such fine is satisfied, not exceeding 500 days; and being arraigned, Benjamin Cohen pleaded guilty, and on the 27th day of March, 1894, was sentenced to be imprisoned in the penitentiary of the county of Kings for the term of four months, and to pay a fine of \$500, and in addition to the aforesaid term of imprisonment to be confined in the penitentiary aforesaid until the said fine be satisfied, not exceeding 500 days; and being arraigned, Victor Bausenwein pleaded guilty, and upon the 27th day of March, 1894, was sentenced to be imprisoned in the penitentiary of the county of Kings for the term of four months; and being arraigned, Garrettson Morris

pleaded guilty, and on the 27th day of March, 1894, was sentenced to be imprisoned in the penitentiary of the county of Kings for the term of twenty-nine days; and being arraigned, Washington I. Tuttle, John M. Cunliffe, William H. Stewart, Frank T. Clark, Nicholas J. Johnson, Harlan Crandall and James H. Cropsey each pleaded guilty, and on the 27th day of March, 1894, each was sentenced to be imprisoned in the common jail of the county of Kings for the term of twenty-nine days." I offer this in evidence.

Mr. Taylor — I object to it on the ground that there is nothing before the committee to show that this is an official record of the Court of Oyer and Terminer, and upon the further ground that there is nothing connecting the contested seats here in the Constitutional Convention with any record of illegal voting, or anything in connection with this record, and on the further ground that it is irrelevant, incompetent and immaterial.

The Chairman — The objections are overruled, and the record is received.

Mr. Taylor — I take an exception.

Gerard M. Stevens, being duly sworn, testified for the contestants as follows:

Q. Mr. Stevens, you are one of the clerks of the Supreme Court, are you not? A. I am the acting clerk of the Supreme Court of this county.

Q. Known as the chief clerk? A. Yes, sir.

Q. The record which is before you is the record of the Court of Oyer and Terminer, is it not? A. Yes, sir.

Q. And is kept by you or under your supervision? A. It is.

Q. Will you please refer to that record, and recite when the first entry is made of indictments against John Y. McKane, Andrew S. Limison, Kenneth F. Sutherland, and the other election officers of the town of Gravesend? A. December 30, 1893, the grand jury brought in an indictment against all the officers named.

Q. Now, during what terms were those cases tried? A. January term, February term, March term.

Q. Can you tell the court what cases were tried; the book is not paged, is it? A. No, sir; there were three cases tried only.

Q. What were those cases? A. The case against John Y. McKane, charged with conspiracy. There were a great many indictments, and they are differently entitled; charged with conspiracy, misconduct of registry officers, etc. Indictment for wil-

fully violating the provision of the Election Law relative to the registration of electors, first district.

Q. Was he tried upon that? A. Yes, sir.

Q. Was he convicted upon that charge? A. Yes, sir.

Q. Please state to the court what the sentence of the court was upon that conviction; read from the record; give us the page or the date. A. February 19, 1894. The People of the State of New York against John Y. McKane, indicted for wilfully violating a provision of the election law relative to the registration of electors, first district, Gravesend, and convicted of said crime by the verdict of the jury. The defendant being arraigned for sentence upon said conviction, being personally present and by his counsel, objections were made and application for a stay. Finally being arraigned for sentence, and being asked if he had anything to say why judgment should not be pronounced against him, etc., the court pronounced sentence that said defendant be confined, at hard labor, in the State prison, at Sing Sing, for the term of six years, and ordered that the sheriff of the county of Kings take the body of the defendant and convey him to Sing Sing forthwith and alone.

Q. Is that the indictment upon which he was convicted (presenting paper to witness)? A. I could not say. There are no court marks upon the indictment to identify it.

Q. Is that the charge for conspiracy? A. That is the indictment for conspiracy, yes.

Mr. Kiendl — I offer in evidence that indictment.

Mr. Taylor — I object.

Mr. Kiendl — It is the only charge of conspiracy made, and that is the only one that he was tried upon.

The Chairman — We do not think that indictment is sufficiently identified. The clerk says he does not know, and that there is nothing on the indictment to show.

Mr. Kiendl — Does that record contain any entry of demurrers filed? A. Yes, sir.

Q. When were the demurrers filed? A. At various times to that particular indictment.

Mr. Taylor — I cannot see why it is material whether a demurrer was filed or not.

The Chairman — Probably for the sake of identifying the indictment.

Mr. Kiendl — That is it.

A. January 11, 1894, demurrers were filed to the indictments for conspiracy against John Y. McKane and others. Indictment for contempt of court; indictment for assault in the second degree; and against Jamison for perjury, and quite a number of others. These demurrers were filed upon that day, and argument had thereon on the twelfth day of January; present, Justice Bartlett. The demurrers were disallowed.

Q. Do you find the filing of these demurrers in accordance with this indictment on the eleventh of January; you find them marked (papers shown witness)? A. No, sir; I do not — excuse me a moment, yes, that is correct.

Q. Now, do you find from the marking upon that paper sufficient to identify the paper in your own mind that that was the indictment.

Mr. Taylor — Mr. Stevens, is the marking upon that paper in your own handwriting? A. No, sir; it is in the handwriting of Mr. Burns, who is the deputy.

Mr. Taylor — I object to it; that the witness cannot testify of his own knowledge.

The Chairman — We will take an answer to that question, and overrule the objection.

Mr. Taylor — I take an exception.

Question read by the stenographer, as follows: Q. Now, do you find from the marking upon that paper sufficient to identify the paper in your own mind that that was the indictment? A. I find various marks to identify it. It is marked a true bill by the foreman of the grand jury. It is marked, filed January 31, 1894, in Mr. Byrne's handwriting. It is marked, demurrers filed January 11, 1894, demurrers allowed March 21, 1894.

Mr. Taylor — Upon that indictment, the demurrers were allowed.

A. I should say so from that marking.

Mr. Kiendl — I show you another indictment. What marking do you find upon that to indicate that that case was before the court? A. I find it as filed the 30th day of January, 1894.

Mr. Taylor — Is that in your handwriting? A. It is in Mr. Byrne's handwriting.

Mr. Taylor — I object to it on the ground that it is not in the handwriting of the witness; that he is not testifying from his own knowledge.

Objection overruled, and exception taken by Mr. Taylor.

A. It is marked as a true bill by Henry F. Finch, foreman; that is all I find, except the list of witnesses.

Mr. Kiendl — I offer that in evidence.

Mr. Taylor — I object.

The Chairman — What is the indictment for?

Mr. Kiendl — That is the indictment upon which he was tried and convicted. The other was a demurrer allowed.

Mr. Taylor — There were several indictments for conspiracy.

Mr. Kiendl — There were two indictments for conspiracy, to one of which there was a demurrer, which appears to have been allowed; then there was another indictment, as read by the clerk, upon which he was tried and convicted.

Mr. Taylor — There is no evidence before the court that that is the indictment, and there is no record, as the witness has testified, that he can identify it by.

The Chairman — In the absence of any proof of the existence of other indictments for conspiracy against the same parties, we think we should receive the paper offered. We overrule the objection and receive the paper.

Mr. Taylor — I ask that my objection be noted as I have already stated, and on the further ground that it is irrelevant, incompetent and immaterial.

Received as stated, and exception taken by Mr. Taylor.

Paper marked Exhibit "P."

Q. Will you look at those indictments, and state what they are for (presenting papers to witness). A. Four indictments against Andrew S. Jimison for perjury.

Q. Was Andrew S. Jimison tried upon those indictments for perjury? A. He was tried upon one indictment.

Q. What was the decision of the court upon that trial?

Mr. Taylor — I object, on the ground that the record is the best evidence.

Mr. Kiendl — Refer to the record, Mr. Stevens. A. The case against Andrew S. Jimison on the indictment for perjury was commenced March nineteenth.

Mr. Taylor — I want an objection noted that the testimony is irrelevant, immaterial and incompetent; and that it is not connected in any way with the illegal voting for delegates to this Constitutional Convention.



The objection is overruled.

Mr. Taylor—And on the further ground that there is no foundation for its introduction in evidence.

The Chairman—The committee understands that you make this objection to all these indictments. It is not necessary to repeat it.

Mr. Kiendl—He was tried upon that indictment? A. Yes, sir.

Mr. Kiendl—I offer it in evidence.

Mr. Taylor—The same objection.

Evidence received, as stated, and exception taken by Mr. Taylor. Paper marked Exhibit "Q."

Q. What was the result of the trial? A. March 21, 1894, the jury at eleven o'clock A. M., again came into court, and being called in the presence of the defendant and counsel, say that they find Andrew S. Jimison guilty, as charged in the indictment, and add a recommendation to mercy.

Q. I now show you indictment against John Y. McKane and Kenneth Sutherland; what is that indictment?

Mr. Taylor—The stenographer will note the same objection.

A. Indictment for oppression.

Q. What was the sentence of Mr. Jimison? A. He was sentenced on the 26th day of March.

Q. Look it up, please? A. That he be imprisoned in the penitentiary of the county of Kings for the term of eighteen months.

Mr. Kiendl—I hand you an indictment for omission of duty under the Election Law; is that indictment one of the papers—

Mr. Taylor—I make the same objection.

The Committee—The committee does not understand that these papers are offered in evidence. For instance, that last indictment, to which the attention of the witness has been called, was not offered or received in evidence. The attention of the witness has merely been called to it, and he has stated what he knows about it. We will take the answer to the question.

Mr. Kiendl—I offer it in evidence.

The Chairman—This is the first one mentioned for oppression?

Mr. Kiendl—Yes, sir.

Mr. Taylor—I make the same objection, and the additional objection that these indictments were all for the crimes or offenses committed previous to election, and not for any offense or fraud on election day when at the polls.

The Chairman — We sustain the objection of the counsel for the contestees, as to this indictment for oppression. We do not think we should receive it.

Mr. Mullen — We move to strike out all testimony on the minutes of the stenographer in reference to the indictment in question, so that it may not come before the Convention. If the indictment is not admissible, any result of the indictment is clearly inadmissible.

The Chairman — The testimony given was for the purpose of identifying the paper. There is no evidence in regard to the contents of it. We do not think the preliminary questions should be stricken out from the record. The paper itself is not received in evidence.

Mr. Mullen — I understood that some testimony had been given of the result of the trial on that indictment.

The Chairman — Not upon that indictment.

Mr. Kiendl, resuming:

Q. I hand you an indictment, Mr. Stevens, for misconduct of registry officers? A. Indictment for omission of duty under the Election Laws.

Q. Omission of duty; and was there any disposition made of that indictment?

Mr. Taylor — The stenographer will note the same objection to all of this as to any testimony or its admission.

A. I do not see any evidence upon the indictment itself. I do not remember any record.

Mr. Kiendl — I hand you indictments for misconduct of election officers (presenting paper to witness), are these records from your office? A. Yes, sir.

Q. What do you find? A. I find them marked as true bills of indictment —

The Chairman — You had better take them separately.

Q. Take each one. A. That is marked by the clerk at the Oyer and Terminer, filed December 30, 1893, with the names of witnesses. It is indorsed as a true bill, signed by the foreman. It is against John Y. McKane, John M. Cunliffe, and others.

Mr. Kiendl — I offer them in evidence.

Mr. Taylor — I make the same objection.

The Chairman — Mr. Clerk, is that one of the cases in which the plea of guilty was made? A. No, sir.

Mr. Kiendl—If it please the committee, the object of that evidence is this—it shows that they have been charged and found guilty.

Mr. Taylor—This document does not show anything of the kind.

The Chairman—I understand there were no proceedings ever had under this indictment.

Mr. Kiendl—They were simply indicted, that is all, under that indictment. The other indictment they have been found guilty on. That has been read from the book. These are indictments that are still hanging over them, but they show the misconduct of those officers as election officers in that town; they show the general corruption. They can remove it by the evidence of these people, if they can find them.

The Chairman—The committee are of the opinion that the objection to this indictment should be sustained.

Mr. Kiendl—Is that the indictment upon which they were charged with conspiracy, Mr. Stevens, upon which they were found guilty?

The Chairman—I think the witness has already testified upon that question.

Mr. Taylor—He has already testified that he could not tell.

Mr. Kiendl—No, he has not. Now, I ask that the record book, which has been referred to, be marked by the stenographer. Page of record book referred to marked Exhibit "R."

Elijah Davis recalled. Examined by Mr. Kiendl:

Q. Mr. Davis, have you got in court the records of the proceedings in the matter of William J. Gaynor against John Y. McKane and others? A. Yes, sir.

Q. Will you please state what these papers are that you have in your hand? A. I think the moving papers in the mandamus proceeding, and the decision of Judge Barnard.

Mr. Kiendl—I now offer in evidence the proceedings in the matter of the application of William J. Gaynor for a mandamus, containing the affidavit and petition for mandamus, and affidavits on contempt, in the same case, and the decision of Judge Barnard in the same case. This is to compel the registry officers to allow an inspection of the registry lists of the town of Gravesend.

Mr. Taylor—This all occurred previous to election, and that application, as I understand it, was denied by the court.

Mr. Kiendl—There is a decision of the court right the other way, holding them in contempt.

Mr. Taylor—I make the same objection to the introduction of these papers that I did to the indictments. I call the committee's attention to the fact that these papers are in two separate proceedings; one was for a mandamus, which was denied, and the others were on proceedings for contempt.

The Chairman—We will receive the affidavits in each case of Gaynor against McKane, and the decision upon the application to punish the defendants for contempt. These we will receive.

Mr. Taylor—I object to their introduction; and I want it noted that I make a demand for the privilege of cross-examining the witnesses who have sworn to these depositions in the papers admitted. That was done in the Assembly case, and if these papers are to be admitted, and made part of the record in this case, I demand the right to have these witnesses called for cross-examination.

Mr. Kiendl—I should certainly object to that. It would be utterly impossible for us to call every man who made affidavits in that proceeding. They can offer in evidence the affidavits made in opposition, if they see fit.

The Chairman—We will issue subpoenas for any witnesses the contestees desire to summon.

Mr. Taylor—I want it noted that I demand that the other side produce these witnesses. I am referring to the affidavits that the chairman of the committee has stated are admitted in evidence, that were used on the proceedings of Gaynor against McKane and others. These affidavits are admitted in evidence, and I demand that the other side produce these witnesses for examination—cross-examination.

The Chairman—We admit these as a part of the record in the proceeding, and we decline to require of the contestants the production of these witnesses for cross-examination.

Mr. Taylor—Does the committee admit the mandamus papers?

Mr. Kiendl—I do not offer them. The opinion of the court was here marked Exhibit "S," and the affidavits on motion for contempt was marked Exhibit "T."

Mr. Kiendl—Have you got in your possession from the files of the court, the record of the census of the town of Gravesend?

A. Yes, sir.

Q. Will you produce it?

Mr. Taylor — I object to that as immaterial, irrelevant and incompetent. I ask the clerk to state when that census was taken?  
A. In 1892.

Q. In what month? A. It is dated February 16, 1892.

Mr. Kiendl — Mr. Clerk, what is the total amount of the population of the town of Gravesend?

Mr. Taylor — If the committee please, has this record been admitted?

The Chairman — The record has not been offered in evidence as a record.

Mr. Taylor — I object to a census taken in the early part of February, 1892; I do not see why it is competent.

Mr. Kiendl — I did not offer in evidence the whole book; I simply want to offer the fact.

The Chairman — We will permit the clerk to state the results from the record.

Mr. Kiendl — What was the total population of the town of Gravesend? A. I find in pencil mark —

Mr. Taylor — I object to what he finds there in pencil.

The Chairman — Objection overruled.

Mr. Taylor — Exception.

A. I find in pencil mark, from the first to the sixth district of the town of Gravesend, that is inclusive, a total of 8,419, in pencil.

Mr. Taylor — Is that in your handwriting? A. No, sir.

Q. Did you make any calculations or figure them up? A. No, sir.

Q. You do not know whether it is a correct total or not? A. I would not swear that it is correct.

Q. Do you know? A. I do not know, except what I see on the page; it is in pencil mark.

Mr. Mullen — I move to strike out that testimony.

The Chairman — We will strike that out; the statement of the witness as to the totals.

Mr. Taylor — As I understand, the testimony is stricken out?

The Chairman — It is, sir.

Mr. Kiendl — As I understand the committee, the testimony stricken out is the census testimony.

The Chairman — Yes, sir.

Joseph F. O'Grady, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. O'Grady, where do you reside? A. New Brighton, Richmond county.

Q. What is your business? A. I am the town clerk of the town of Castleton.

Q. Were you the town clerk of the fifth Castleton in 1893, in November? A. Yes, sir.

Q. And prior thereto? A. Yes, sir.

Q. We find on the record the word *ex-officio*; what does that mean? A. The clerk of the village of New Brighton is also town clerk, *ex-officio*, of the town of Castleton; the town and the village being common.

Q. Now, Mr. O'Grady, have you in court the registry lists, both lists, of the town of Castleton, for the fifth, eighth and ninth election districts of the town? A. Yes, sir.

Q. For the year 1893? A. We have.

Q. Will you please produce the poll-lists — both poll-lists for each district? (Witness produces papers.)

Mr. Kiendl — I offer in evidence the poll-lists for the fifth election district of the town of Castleton.

Mr. Mullen — I call the attention of the committee to the fact that there has been an erasure and over writing upon that book, as to when it was filed. Evidently it has been filed some other year, and afterwards "3" put over it; and I would like an explanation of that before it is put in evidence.

The Chairman — You may cross-examine the witness in regard to that before the book is introduced.

Mr. Mullen — Mr. O'Grady, I call your attention to this paper, which I will have the stenographer mark for identification.

Paper marked No. 1, for identification.

Q. I call your attention to the words "Filed, November 8." Will you be kind enough to read after November 8, and tell us whether there was any other year there, before the "1893" was put there. I will give you a powerful glass, if you desire. Look at it and see if you can detect there is some other date written there? A. It appears to be a "2."

Q. Then the fact is it was originally filed in 1892, and subsequently changed to 1893. Is that so, if you know?

Mr. Kiendl — I object to that.

The Chairman — I think the question in its present form may be asked the witness — whether he knows that that record was originally filed in 1892. A. It was not.

Mr. Mullen — Can you explain in whose writing the “2” is that appears to be there under the “3?” A. I could not.

Q. Do you recall when you first saw that paper in your hands? When you first saw it in your office? A. On the day succeeding election; that is, on November eighth.

Q. Is it or is it not a fact that the “2” that seems to be covered by the “3” was put upon that paper by you? A. What is that question?

Q. Is it or is it not a fact that the “2” which appears to be covered by the “3” was put upon that paper by you, and afterwards changed to the “3?” A. It may have been; I don’t remember the circumstance.

Q. What is your best opinion as to the fact, if you have any? A. As to whether there was first a “2?”

Q. As to whether you put a “2” and afterwards changed it to a “3.” Have you any recollection or opinion upon that subject? A. I have not.

Q. But the fact still remains that there was a “2” there originally, and afterwards changed by a “3?” A. Yes, sir.

Q. Can you state for the information of the committee, from whom you received the paper in question, which is marked No. 1, for identification.

Mr. Kiendl — I object to that. The gentleman wanted to find out about that figure. We have got through with that.

Mr. Mullen — We have not got through with it.

The Chairman — I think he has a right to inquire for the information which the clerk has in regard to the source from which the paper was received, before the committee passes upon its acceptance or rejection.

Mr. Mullen — Have you any recollection from whom you received that document, marked No. 1, for identification? A. As to the individual who filed it.

Q. Yes. A. I have no recollection.

Q. Do you remember receiving it from any one? A. I remember receiving all the returns; no return in particular. I haven’t any distinct memory of the return of any individual book.

Q. Do you remember from whom you received the returns of the fifth election district of the town of Castleton? A. I do not.

Q. You cannot remember any of the individuals who delivered any of these papers to you? A. No, sir.

Q. Is that your handwriting there where it is marked filed? A. Yes, sir.

Q. Have you a recollection of making that indorsement upon that paper? A. Not this particular one.

Q. When was your attention first called to the document in question and where? A. When I was subpoenaed to appear before the Assembly committee; I believe it was the first contest.

Q. Before Judge Cullen? A. Before Judge Cullen.

Q. Have you examined the entries of this book to observe the contents of it? A. No; except in the case of making a certified copy. I held the book while the other gentleman made the comparison.

Q. Have you searched in your office to ascertain whether or not there is another book purporting to be election poll-lists of the fifth election district for the year 1893, and filed November eighth in your office, other than this? A. There is another one with this.

Q. Have you got it with you? A. Yes, sir.

Q. And they are duplicates, as you understand them? A. As far as I know they are duplicates.

Q. Did you compare them? A. No, sir.

Q. Have you any recollection when this second book, which I will now have marked No. 2, was filed in your office? A. To the best of my knowledge they were both filed at one time.

Q. Have you a recollection of making an indorsement upon them when they were filed? A. I usually file the indorsement as they are handed to me.

Q. Have you a recollection of indorsing them when they were filed with you, these two books? A. I have not.

Marked No. 2, for identification.

Q. I call your attention to the fact that this paper marked two for identification, appears on its face to have been filed in your handwriting on the 9th of November, 1893; is that the fact? A. Yes; it must be. I can explain that if you will allow me.

Q. That is in your handwriting? A. Yes, sir.

Q. When was this book, which is marked No. 2, for identification, first brought to your attention as being in your office? A. I presume on the ninth.

Q. When do you recall seeing it again? A. To the best of my



recollection when I was subpoenaed to appear before the Assembly committee.

Q. Was this paper, marked No. 2 for identification, produced by you before the court on the contest in the Assembly cases?

A. Yes, sir.

Q. Was it marked in evidence? A. I believe so.

Q. What is your recollection of the fact? A. I have no particular recollection of it.

Q. Do you remember producing it before the court? A. I presume it was produced —

Q. I want to know your recollection? A. I have no distinct recollection.

Q. Can you tell me any place on that paper where it has been marked for identification or offered in evidence before the court or any other body? A. No, sir.

Q. The fact is that no such evidence appears upon the papers, is it not? A. Not that I see.

Q. And, personally, you have no recollection of the time, circumstance or place where you received either of these books? A. No, sir.

Q. Nor the individuals from whom you received them? A. No, sir.

Q. Nor have you made personal examination of the contents of these books? A. No, sir.

Q. Nor do you know the contents of them? A. No, sir.

Q. The fact is that you simply have found these books on file in your office? A. Yes, sir.

Q. As town clerk? A. Yes, sir.

Q. Whether they were filed in 1892 or 1893, you are not able positively to state, are you? A. No, sir.

Mr. Kiendl, resuming:

Q. Both of these poll-lists bear your file mark, do they not? A. Yes, sir.

Q. That was written by you about the time it bears date, or the day it bears date? A. Yes, sir.

Q. And filed by you in your office? A. Yes, sir.

Q. In the same manner that you file any other paper that is recorded or filed with you? A. Yes, sir.

Q. It was delivered to you by some one, and you are not sure as to who that person was? A. No, sir.

Q. And it was delivered when? A. I presume on the day preceding the election; there is a discrepancy in the dates here.

Q. You were about to explain the one marked (Filed Nov. 9th, 1893)—please explain to the committee what you were about to say in relation to that filing? A. The statement I was about to make may not apply to this district in question; it was a mooted question down there whether both poll-lists should be filed with me, or one with the county clerk and one with the town clerk; in many instances one was filed with the county clerk and one with me, and in some cases we sent inspectors after them to recover them; I do not know whether it was the case in this individual instance or not—in the matter of the fifth district.

Mr. Kiendl—I offer in evidence these poll-lists.

Mr. Mullen—We object to the lists, on the ground that there is no foundation laid for their introduction in evidence, and that they are incompetent, irrelevant and immaterial, and not proven to be the correct and true poll-lists of that district. That they are not within the issue. That the best evidence is not produced to lay a foundation for their introduction, to wit, that the inspectors should be called to identify the documents in question as the genuine documents, the town clerk being unable to give such evidence as to fix the time and place and circumstances of the identity of the individuals who delivered them to him.

The Chairman—The objection is overruled and the papers are received in evidence.

Mr. Mullen—To which we take an exception.

Papers marked Exhibits “U” and “V.”

Q. Have you in your possession the poll-lists of the eighth election district of the town of Castleton? A. Yes, sir.

Q. Will you please produce them? (Witness produces papers.)

Q. They are taken from the files in your office? A. Yes, sir.

Q. When were they filed in your office? A. November 8, 1893.

Q. Both were filed upon that day? A. I presume so; yes, sir, they are marked in that way.

Mr. Kiendl—I offer them in evidence.

Mr. Mullen—We object to the introduction of these papers in evidence, on the ground that neither of them contains a certificate of the inspectors of election that the foregoing lists is a true and correct list of the district in question; that there is no foundation laid for the introduction of the papers in evidence; that they are incompetent, irrelevant, immaterial and not the best evidence of the fact of what is the true roll for the district in question.

Same ruling and exception.

Papers marked Exhibits " W " and " X."

Q. Have you the poll-lists for the ninth election district of the town of Castleton? A. I have.

Q. Will you produce them? (Witness produces papers.)

Q. They are taken from the files in your office? A. Yes, sir.

Q. They were filed on the 8th day of November, 1893? A. Yes, sir.

Q. Is that your file mark? A. That is my file mark.

Mr. Kiendl — I offer them in evidence.

Mr. Mullen — Mr. O'Grady, were you present, or have you at the present time any personal recollection of the fact of these papers being filed in your office on the 8th of November, 1893? A. No, sir.

Q. Do you recollect from whom you received these papers? A. No, sir.

Q. Do you recollect when you received them? A. No, sir — at what time of the day, do you mean?

Q. Yes. A. No, sir.

Q. Do you recall the identity of these papers as having been received by you on the date in question? A. I have no distinct recollection of their identity.

Q. And the fact is that the only knowledge you have of the identity of these papers and their filing in your office is that you find your file mark upon them as of November 8, 1893?

Mr. Mullen — I make the same objection to this.

Same ruling and exception.

Papers marked Exhibits " Y " and " Z."

Q. Have you in your possession the registry lists for the fifth election district of the town of Castleton? A. Yes, sir; only one registry list.

Q. How many are there? A. I did not recollect whether there was any more or not.

Q. Is this the original list on file in your office? A. Yes, sir.

Q. When was it filed? A. November 8, 1893.

Q. It bears your file mark? A. Yes, sir.

Mr. Kiendl — I offer this registry list in evidence.

The same objection, ruling and exception.

Paper marked Exhibit " AA."

Q. Have you in your possession the registry lists of the eighth election district? A. Yes, sir.

Q. How many have you in your possession? A. Three copies.

Q. When were they filed in your office? A. November 8, 1893.

Q. And filed on the same day? A. Yes, sir.

Q. Do they bear your file mark? A. Yes, sir.

Mr. Kiendl — I offer in evidence these three copies.

Same objection, ruling and exception.

Papers marked Exhibits "BB," "CC" and "DD."

Q. Have you in your possession four registry lists of the ninth election district? A. Yes, sir.

Q. Of the town of Castleton? A. Yes, sir.

Q. Do they bear your file mark? A. Yes, sir.

Q. When were they filed? A. November 8, 1893.

Q. All filed on the same date? A. Yes, sir.

Mr. Kiendl — I offer them in evidence.

Same objection, ruling and exception.

Papers marked Exhibits "EE," "FF," "GG" and "HH."

Q. Have you the election returns of the fifth, eighth and ninth election districts of the town of Castleton? A. Yes, sir.

Q. Were they taken from the files in your office? A. Yes, sir.

Q. When were they filed? A. November 8, 1893.

Q. Do they bear your file mark? A. Yes, sir.

Q. Your writing? A. Yes, sir.

Mr. Kiendl — I offer them in evidence.

Same objection, ruling and exception.

Papers marked Exhibits "II," "JJ" and "KK."

Q. I now hand you "Exhibit 'A,' H. A. B.," and ask you if that is a certified copy made by you of the poll-lists of the eighth election district of the town of Castleton; is that correct? A. I presume that is the copy.

Mr. Taylor — Is it certified by you? A. It is certified; the certification is attached.

Q. What do you certify? A. I certify that it is a correct copy.

Q. I show you Exhibit D, another one of the poll-lists made by you? A. Yes, sir.

Q. Also Exhibit C? A. Yes, sir.

Q. Also Exhibit B? A. Yes, sir.

Q. Exhibit J, registry list? A. Yes, sir.

Q. I show you Exhibit G? A. Yes, sir.

Q. I also show you Exhibit E; is that a copy? A. Yes, sir.

Q. I also show you Exhibit F, and ask you if that is a copy?  
A. Yes, sir.

Q. I also show you Exhibit L, and ask you if that is a copy?  
A. Yes, sir.

Q. Also Exhibit K, and ask you if that is a copy? A. Yes, sir.

Q. Also Exhibit I? A. Yes, sir.

Q. Exhibit H? A. I don't know about that.

Q. Now, the error in the fifth Castleton district came about by the paper first being filed in the county clerk's office.

Mr. Taylor—I object to this; I do not see how this witness can testify to an error in the county clerk's office.

A. I do not know anything about any error.

James M. Cromwell, duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Cromwell, where do you reside? A. Sailors' Snug Harbor.

Q. How long have you resided there? A. Three years and a half?

Q. Are you one of the poll clerks, or were you one of the poll clerks on the 7th day of November, 1893? A. I was, sir.

Q. Of what election district? A. The ninth.

Q. Of the town of Castleton? A. Yes, sir.

Q. Please look at the poll-lists I now hand you and state whether they are the poll-lists that were used in that election district on the seventh of November last (counsel presents papers to witness)?  
A. Yes, sir.

Q. Which is the one you kept? A. This is it, sir (witness indicating Exhibit Y).

Q. Will you look at Exhibit Z and see what that is? A. That is mine.

Mr. Taylor—Is that your handwriting? A. Yes, sir.

Q. Is the other one in your handwriting? A. Yes, sir.

Mr. Kiendl—They are both in your handwriting? A. They are both in my handwriting.

Q. Are they duplicates? A. No; except Z is not in my handwriting.

Q. In whose handwriting is that? A. I do not know.

Q. Who was the poll clerk with you? A. Mr. Bunker.

Q. Is not that his handwriting? A. It may be, sir; I could not say; I am not familiar with his handwriting at all.

Q. When did you arrive at the election booth upon that morning? A. Shortly after it opened; a few minutes after.

Q. Was the door opened when you got there? A. Yes, sir.

Q. Who was there when you first arrived? A. There were the three inspectors, two ballot clerks, and one poll clerk.

Q. How long after you arrived was the proclamation made announcing the opening of the polls? A. It was done previous to my getting there — a few minutes.

Q. When were you handed the books, as soon as you arrived there? A. Yes, sir; as soon as I arrived there.

Q. No votes had been received before you arrived? A. Not to my knowledge, sir.

Q. Who was present at the time you arrived there besides yourself? A. Three inspectors, two ballot clerks and one poll clerk.

Q. Who were the inspectors? A. J. T. Blatchford, H. H. Hewitt and Alexander Love.

Q. Do you know where Mr. Blatchford, Mr. Love, or the other inspector is to-day? A. Well, Mr. Love is in the hospital in Snug Harbor, Mr. Hewitt is in Snug Harbor, and I could not say where Mr. Blatchford is.

Q. After election were they around the Harbor? A. Yes, sir.

Q. All the time? A. All the time, sir, until the investigation down to Clifton, I think it was, and Mr. Blatchford was subpoenaed to go down there to give his evidence, and he disappeared.

Q. Did Mr. Love also disappear? A. No, sir; Mr. Love and Mr. Hewitt went down there and gave their evidence.

Q. Did not they disappear after they had given their evidence? A. No, sir.

Q. Mr. Blatchford did disappear? A. Yes, sir; he has not been seen since.

Q. The other two gave evidence? A. Yes, sir.

Q. And immediately after they gave evidence he disappeared? A. Yes, sir.

Q. They were all summoned there at the same time? A. Yes, sir.

Mr. Mullen — He disappeared before they gave evidence, did he not? A. He never went there at all; he never appeared there.

Q. Now, will you please turn to the letter B, at the top of the page, and find the name of R. P. Van Brunt; do you find it there?

A. Yes, sir.

Q. What mark, if any, appears upon the record as to that name; is there anything? A. No, sir.

Q. Is the name scratched? A. Yes, sir; there is a scratch against it.

Q. Is that name written by you? A. No, sir.

Q. Was that name written before you got to the polling place? A. Yes, sir.

Q. Now, before that do you find the name of Thomas Brower? A. Yes, sir.

Q. Opposite that, what do you find? A. Number 22, if it is, or 21, or 27, I cannot tell you.

Q. Are those two entries in your handwriting? A. No, sir.

Q. Were those two entries made before you got there in the morning? A. Yes, sir.

Q. You say they are not in your handwriting? A. No, sir.

Q. They were written there before you got there in the morning? A. They were, sir.

Q. Did anybody keep that poll-list before you got there that morning? A. Not to my knowledge, sir; I cannot say.

Q. Did you find it lying on the table when you got there? A. Yes, sir.

Q. Now, look at the letter E, and find the name of E. Evans? A. Yes, sir.

Q. In whose handwriting is that name? A. I could not say, sir.

Q. Is it in your handwriting? A. No, sir.

Q. Was it written in the book before you got there that morning? A. Yes, sir.

Q. Do you know who wrote that in that book? A. I do not, sir.

Q. Now look at the name of John Early? A. Yes, sir.

Q. In whose handwriting is that? A. I could not say, sir.

Q. Is it in your handwriting? A. Yes, sir.

Q. Was it written in the book before you got there in the morning? A. It was, sir.

Q. Do you know who wrote it? A. I do not.

Q. What number do you find opposite the name Evans? A. 28.

Q. What do you find opposite the name Early? A. 73.

Q. What, rather those marks 28 and 73, in the book at the time you got here in the morning? A. No, sir; these are my figures.

Q. They were put upon there afterward, were they? A. Yes, sir.

Q. Who gave you the information to put them upon the record? A. The ballot clerk gave me these numbers, sir.

Q. What was the first ballot that you saw voted in its number, No. 1? A. No, sir; No. 1 was destroyed. They told me it was a destroyed ballot.

Q. It was a destroyed ballot? A. Yes, sir.

Q. Then No. 2? A. I cannot say whether it was No. 2, or what number; I think it was No. 3, sir.

Q. Look at No. 2? A. Oh, yes; No. 2; yes, sir.

Q. Is that in your handwriting? A. Yes, sir.

Q. And it was made by you after you arrived there in the morning? A. Yes, sir.

Q. Now, the name of James Elliott, No. 64? A. Yes, sir.

Q. Whose handwriting is that in? A. In mine, sir.

Q. What name appears before that? A. John Early's, sir.

Q. What number? A. 73.

Q. James Elliott, 64, follows that, does it? A. Yes, sir.

Q. So 73 precedes 64? A. Yes, sir.

Q. Now turn to the page containing D. Do you find that name of Thomas Davis? A. Yes, sir.

Q. What number? A. 29.

Q. In whose handwriting is that? A. I could not say, sir.

Q. Is it in your handwriting? A. No, sir.

Q. Was it written upon that book before you got there in the morning? A. Yes, sir.

Q. Do you know who wrote that? A. No, sir; I do not.

Q. Does 29 precede 17 on that page? A. It does, yes.

Q. Now turn to the poll-list under F, and notice two names at the top of the page—Alexander Freeman and George Foster. A. Yes, sir.

Q. In whose handwriting are those? A. I could not say.

Q. Are they in your handwriting? A. No, sir.

Q. Were they written upon the book before you got there in the morning? A. Yes, sir.

Q. Do you know who wrote them? A. No, sir.

Q. What are their numbers? A. 24 and 25.

Q. Do 24 and 25 precede these? A. Yes, sir.

Q. All the other names upon the page are in your handwriting, are they not? A. Yes, sir.

Q. Now turn to the letter G, and find the name of V. Graham? A. Yes, sir.

Q. What is the number of that? A. 23.

Q. In whose handwriting? A. I could not say.

Q. It was not written by you? A. No, sir.

Q. Written before you got there in the morning? A. Yes, sir.



Q. Written by some one whose handwriting you do not know?

A. Yes, sir.

Q. You do not know the handwriting, do you? A. No, sir; I do not.

Q. Do you find the name of Gillespie? A. Yes, sir.

Q. Whose handwriting is the name in? A. In mine.

Q. What is its number? A. 15.

Q. Does 23 precede 15? A. Yes, sir.

Q. Look at the letter J. The first three names on that page.

J. Johnson, 21, do you find that? A. Yes, sir.

Q. William Johnson? A. Yes, sir.

Q. 235, is that right? A. Yes, sir.

Q. And J. W. Jackson, 50? A. Yes, sir.

Q. In whose handwriting are those three names? A. I could not say, sir.

Q. One is 21, one is 235, and the other is 50, is that correct?

A. That is right, sir.

Q. And they were all written before you got there in the morning, were they not? A. Yes, sir.

Q. And they are not written by you? A. No, sir.

Q. And you do not know in whose handwriting they are in? A. No, sir.

Q. Now look at the letter M, and find the name William McGrath? A. Yes, sir.

Q. In whose handwriting is that name? A. I could not say.

Q. Was it written by you? A. No, sir.

Q. Was it written before you got there in the morning? A. Yes, sir.

Q. What is the number? A. 57.

Q. Does 57 precede 11? A. Yes, sir.

Q. Do you know who wrote that? A. No, sir; I do not.

Q. Look under the letter O, and find the name of William M. Otis? A. Yes, sir.

Q. What is the number? A. 139.

Q. Whose handwriting? A. I could not say.

Q. Is it written by you? A. No, sir.

Q. Written before you got there in the morning? A. Yes, sir.

Q. Does 139 precede 42? A. Yes, sir.

Q. In whose handwriting are the figures 139? A. In mine.

Q. From whom did you get that information? A. From the ballot clerk, sir.

Q. Is the balance of that page in your handwriting? A. Yes, sir.

Q. Now look at that letter P; turn to the name C. Perkins, No. 28? A. Yes, sir.

Q. Is that in your handwriting? A. No, sir.

Q. Was it written in the book before you got there in the morning? A. It was, sir.

Q. Do you know who wrote it? A. No, sir.

Q. Look at the name M. M. Peterson, No. 10? A. Yes, sir.

Q. Do you find any other Petersons on the same page? A. Yes, sir; Nicholas Peterson, and M. M. Peterson, last.

Q. What is that number? A. Nicholas Peterson is 198, and M. M. Peterson is 208.

Q. Do you know a man by the name of M. M. Peterson in the Harbor? A. I know a Peterson, but whether his name is M. M., I cannot say.

Q. Do you know two Petersons? A. No, sir; I do not.

Q. Did you see either of these gentlemen on election day? A. No, sir; not to my knowledge, I did not. I did not take any particular notice of anybody.

Q. Turn to the letter R. The first three names; William Reagan, No. 30? A. Yes, sir.

Q. B. Russell, No. 31? A. Yes, sir.

Q. And F. W. Raynor, No. 32? A. Yes, sir.

Q. In whose handwriting are those? A. I do not know.

Q. Were they written by you? A. No, sir.

Q. Were they written before you got there in the morning? A. Yes, sir.

Q. Do you know who wrote them? A. No, sir.

Q. Look at the name Robinson, James, upon that page; do you find it? A. Yes, sir.

Q. What address is opposite that name? A. Barde avenue.

Q. Is that written in ink? A. No, sir; in pencil.

Q. Do you know whether there is such a person as James Robinson? A. I cannot say, sir.

Q. Who wrote that pencil mark upon that book? A. I think it is my writing.

Q. Was it written on election day? A. Yes, sir.

The Chairman — Where is Barde avenue? A. It is in a village called Livingston, on Staten Island.

Q. There is a street of that name in the village of Livingston? A. Yes, sir.

Mr. Kiendl, resuming:

Q. What number is opposite that name? A. 66.

Q. Do you know James Robinson? A. No, sir.

Q. Now look at the beginning of the letter S, for the name Alexander Smith? A. Yes, sir.

Q. Number 35; Lewis F. Smith, 34? A. 33 and 34.

Q. Are they in your handwriting? A. No, sir.

Q. Do you know whose handwriting they are in? A. No, sir.

Q. Were they written upon the book before you got here in the morning? A. They were.

Q. Do you know who wrote them? A. No, sir.

Q. Look at the letter V; do you find the name of R. P. Van Brunt? A. Yes, sir.

Q. What is the number? A. 36.

Q. In whose handwriting? A. I cannot say.

Q. Is it written by you? A. No, sir.

Q. Was it written before you got there in the morning? A. It was, sir.

Q. Do you know who wrote it? A. I do not.

Q. Now look at the letter W, and find the name S. O. Wilson? A. Yes, sir.

Q. What is the number? A. 18.

Q. In whose handwriting? A. My own, sir.

Q. Number 155 — does that appear upon there? A. Yes, sir.

Q. What relation does that bear in time as to 18? A. 18 is on top and 155 is fifth from the bottom.

Q. You find the name Samuel Wilson, do you not? A. Yes, sir.

Q. What is the address? A. Richmond terrace.

Q. What is the number? A. 155.

Q. Did you write that name? A. Yes, sir.

Q. And you wrote the name S. O. Wilson? A. Yes, sir.

Q. Did you see any man by the name of S. O. Wilson appear that day? A. I didn't take particular notice of anybody. I was busy at the book, and I just took the names as they were called out. The inspector called them out.

Q. You do not recollect seeing such a person? A. No, sir.

Q. Now turn to the letter M, Marks Berrett? A. Yes, sir.

Q. What do you find opposite that? A. 40.

Q. What is the next name? A. W. Mason.

Q. What is the number? A. 258.

Q. Can you explain why the name Berrett, Marks, No. 40, follows the name, W. Mason, 258? A. I cannot explain it at all, sir,

any more than I ask the number for the ballot of Marks Berrett, and they told me No. 40.

Q. You have no other explanation to give but that? A. No, sir.

Q. Your associate as poll clerk was Mr. Bunker? A. Yes, sir.

Q. And he was there during the whole of the day? A. Yes, sir.

Q. Did you see Mr. Mathew S. Tully there during the day? A. I saw him there once or twice, a few moments.

Q. Was he there in the morning when the polls opened? A. Well, I did not see him there in the morning, not much before nine or ten o'clock, I do not think, sir.

Q. Do you know anything about the people who were assisted in voting in that election district? A. Well, I remember one; I forget his name now, who was assisted.

Q. Is that all you remember? A. That is the only one I remember; it is Bernard Warbeck, No. 52.

Q. That was the only one you find marked as assisted? A. Yes, sir.

Q. What is the number? A. No. 52.

Q. Now look at the name J. O. Whalen? A. Yes, sir.

Q. What is the number? A. 151.

Q. Now, the name, Westerman, George; what is the number you find opposite that name? A. 153.

Q. Samuel Wilson? A. 155.

Q. Whiteberry, T. H.? A. 156.

Q. Do you remember these three men coming together at one time? A. No, sir; I do not.

Q. Did you see Mr. Whiteberry there upon that day? A. No, sir; I cannot say that I did.

Q. Look at the name Watson on the page? A. Yes, sir.

Q. E. D.? A. Yes, sir.

Q. Is that number 49? A. No, sir; 246.

Q. Now look at the name of Watson, Ed.; what do you find there? A. That is No. 49, sir — that E. D. is Ed. Watson.

Q. Do you know a man by the name of Ed. Watson? A. No, sir; I do not.

Q. Did you see any man by the name of Ed. Watson? A. No, sir.

Q. Did Watson come there on election day? A. I would not know either of them if they did.

Q. Look at the name Morrill, under M.; what number do you find opposite that name? A. Samuel J. Morrill, 252.

Q. W. B. Marvin, 253? A. 253.

Q. John W. Munson? A. 254.

Q. James McGuire? A. 255—Thomas McGuire. .

Q. Is that Thomas? A. Yes, sir.

Q. W. Mason? A. 258.

Q. Did you see either of these people come there? A. No, sir.

Q. Did you see Mr. De Morgan at the polling place upon that day? A. I saw him there, but at that time I did not know who he was; I afterwards saw him in Judge Gaynor's court; that was the first time I ever saw him to know who he was.

Q. Do you know what happened to him upon that day? A. No, sir; I do not.

Q. Did you see him put out of the polling place? A. No, sir.

Q. You do not remember that? A. No, sir; that was some disturbance, but I was not watching to know what it was.

Q. You know there was a disturbance upon that day? A. Yes, sir.

Q. You had a policeman there? A. There was a policeman there; yes, sir.

Q. You do not know who the parties were that were in that disturbance? A. No, sir.

Q. Do you know the number of votes that were returned as passed in that district? A. I could not say exactly what it was, sir; 258, or something of that kind.

Q. I show you a paper; did you make up that return? (Counsel presents paper to witness.) A. A portion of it is in my handwriting.

Q. What portion of it is in your handwriting? A. Well, held in the ninth.

Q. Did you figure up the totals? A. No, sir.

Mr. Taylor—Then I object to the witness testifying as to the number of votes, on the ground that it is not in his handwriting, and he did not make the calculation.

A. A portion of it is in my handwriting.

The Chairman—He can state what he did in connection with it.

A. The figures are in my handwriting.

Mr. Kiendl—The figures are in your handwriting? A. Yes, sir.

Q. Read the total amount of the whole?

Mr. Taylor—Did you make the calculation of these totals?  
A. Yes, sir.

Mr. Kiendl—What is the total amount? A. 273.

Q. Now will you turn and give us the total vote on the constitutional delegates in that district?

Mr. Taylor — I ask the witness if that calculation was made by him? A. Yes, sir.

Mr. Kiendl — What is the total vote and the names? A. Allen C. Beach received 252; Henry Bacon, 252; Charles J. Paterson, 252.

Q. That is not what I want. A. James W. Riggs, 252; Eugene A. Curran, 252; George W. Roderick, 252; William M. Mullen, 252; Thomas W. Fitzgerald, 252; John C. Kinkel, 20; Charles L. Pashley, 20; William Deterling, 20; John Lott Nostrand, 20; Charles J. Kurthy, 20.

Q. Now, were you present when the votes were counted, the ballots were counted? A. Yes, I was in the booth at the time.

Q. Did you take part in the counting? A. No, sir; all I did, I took some of the tickets and opened them and separated them out, and put them in piles of ten.

Q. You put them in piles of ten? A. Yes, sir.

Q. Who else was there besides yourself putting them in piles? A. The other poll clerk and ballot clerks and inspectors.

Q. Everybody who was there was taking part? A. Yes, sir.

Q. Did you count all of the ballots? A. No, sir; I didn't count any.

Q. Did any one in your presence count all of them? A. Well, the chief inspector counted them.

Q. Did you see him count all of them? A. Well, I didn't see him count them.

Q. Did he just call them off so many? A. Yes, sir.

Q. Was there any tally sheet kept by you? A. No, sir.

Q. Or by any one that you saw? A. I could not say.

Q. Did you see any? A. I did not see any; no, sir.

Q. Mr. Bunker took part in counting the votes? A. Yes, sir.

Q. He was your associate was he not? A. Yes, sir.

Q. Now, will you turn to the book kept by Mr. Bunker, and see at the top of the page B —

Mr. Taylor — I object to his testifying to the book kept by Mr. Bunker. The book speaks for itself. I do not see why we want the witness to testify from that book. It has been offered in evidence and speaks for itself.

The Chairman — I think the witness may state what facts appear upon the book, merely as a matter of convenience. His

evidence will not be considered as proof of the fact, except so far as it is sustained by the book itself.

Mr. Taylor — I except upon the ground that it is incompetent, irrelevant and immaterial; that the book speaks for itself and is the best evidence.

The Chairman — The committee will consider the book as the best evidence; and any statement of results which may be given by the witness will be merely taken as a matter of convenient reference.

Mr. Kiendl — What do you find on the top of the page? A. R. P. Van Brunt, Thomas Brown.

Q. What is the next name after that? A. H. O. Birch.

Q. Is the name H. O. Birch in the same handwriting that the first name upon that list is? A. No, sir.

Mr. Taylor — Did you see these entries made in this book — did you see these two entries made? A. No, sir.

Mr. Kiendl — Did you see the second entry made there? A. No, sir.

Mr. Taylor — I object to this evidence, there is nothing to show that this witness is an expert in handwriting. He is simply giving his opinion as to whether it is the same or a different handwriting.

The Chairman — What is the purpose of the evidence?

Mr. Taylor — We will admit that those names were there before this poll clerk got there.

Mr. Kiendl — I will offer in evidence the Assembly document No. 15 of State, in the proceeding in the matter of election contests of Michael Conklin, contestant, against Michael McGuire, contestee, for the office of Member of Assembly from Richmond county. I will offer in evidence the testimony of Mr. Bunker, from page 64 to 71, inclusive, taken before his honor, Egdar M. Cullen, both direct and cross examination.

Mr. Taylor — We object, unless they will agree to produce Mr. Bunker for cross-examination.

Mr. Kiendl — I submit that the evidence itself is competent evidence.

The Chairman — The committee do not feel bound by the strict rules of common law relating to evidence; but it is unwilling to take a deposition in another cause, in which the parties here had no interest, unless it appears that it is impossible to produce the witness whose testimony was given, and until some proof of the sort is offered, we are unwilling to receive it.

Mr. Kiendl — I think we can show that the witness cannot now be found.

Q. Mr. Cromwell, you are now in the Harbor, are you not?  
A. Yes, sir.

Q. Is Mr. Bunker at present in the Harbor? A. No, sir; I believe he is not. I understood that he had taken a month's liberty. He has gone somewhere; I cannot say where he is.

Q. You do not know where he is? A. No, sir.

Q. Do you know of your knowledge that he has taken a month's liberty? A. No, sir.

Q. That is something you have heard? A. Yes, sir.

Q. You know that he was not there when you left this morning?  
A. Yes, sir.

Mr. Taylor — Q. Did you inquire for him this morning? A. I did, sir.

Q. Where? A. I inquired of his room-mate.

Q. You didn't inquire at the office? A. No, sir.

Q. All you know is hearsay from what his room-mate said?  
A. He would know whether he slept there.

The Chairman — We are not prepared at present to receive that evidence.

Mr. Kiendl — I have also the record of the institution, showing that the man has left there and has gone away; it is true, on a leave, but he is away.

The Chairman — The committee for the present will reserve the question of the admission of this evidence, which is now offered — the evidence of Mr. Bunker given upon a previous contest. They are not disposed at present to admit that evidence; at least, not without some further proof of an effort to obtain the presence of Mr. Bunker.

Mr. Kiendl — We can produce a person who was in port and heard Mr. Bunker make these statements in court.

Recess till two o'clock.

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#### AFTERNOON PROCEEDINGS.

Mr. Mullen — There seems to be a question made, if it please the committee, as to the book purporting to show the population of the town of Gravesend. I ask the committee to observe that this census of the population of Gravesend was taken in the



month of February, in the winter time, when Coney Island is deficient of at least one-half of its resident population; it being the fact, which will be demonstrated upon this hearing, and of which you are probably aware, that there are many residents of Gravesend who maintain their residence from year to year, yet as a matter of fact they are present in Gravesend only from the first of June up to the first of December, perhaps, or the fifteenth of November. Now, I submit, while it appears upon the face of this book, that there is no official determination by those who took the census as to the number of residents of Gravesend at the time this census was taken in February, yet I am informed by the gentleman who has charge of the book that he has examined and computed the number of names that appear upon this census roll, and that they correspond with the exception of one in number; yet, in weighing the importance of this book, if you take it into consideration, I wish to impress it upon your minds that it is not of such a nature as will warrant you in arriving at a conclusion as to what was the actual number of residents of Gravesend on election day last, because a census taken in February, either before or after election, would not be a truthful statement of the number of residents of Gravesend on election day. In other words, this is too remote and too indefinite to consider as evidence, and the probabilities are that we will be able to show that the census taken in February as compared with the census taken in November will show an entirely different state of affairs in regard to the number of the population in Gravesend.

Mr. Kiendl — All I have asked the counsel to say is whether he would concede that that was accurate. I did not ask him to argue the matter.

Mr. Mullen — It is suggested to me by my colleague, Mr. Riggs, that, perhaps, it would be well to call to the attention of the committee the fact that in some respects — I do not pretend to say politically — Gravesend and Saratoga, so far as their population is concerned, are somewhat similar. The census of the actual residents should be taken in the village of Saratoga Springs in February; you would find that the population, perhaps, would not be more than half what it would be if taken during the busy season.

The Chairman — The committee will endeavor to take into consideration the peculiar characteristics of Gravesend in estimating the weight that ought to be attached to the evidence of the population given.

The examination of the witness was suspended for the purpose of calling De Morgan.

John De Morgan, sworn for the contestants, testified as follows:

Mr. Kiendl — Mr. De Morgan, where do you reside? A. In Hart Park, New Brighton.

Q. On what street? A. On Hart avenue, in Hart Park.

Q. How large a district is Hart Park? A. It covers about thirty acres.

Q. How long have you resided there? A. A little over five and one-half years.

Q. Are you well acquainted with the inhabitants of that district? A. Yes, sir; I know them all.

Q. Do you know James Allen, living there? A. I do not.

Q. About how many houses are there in Hart Park? A. At the time of the election there were fifteen.

Q. Is that a new district? A. The old eighth district.

Q. The eighth district, town of Castleton, Richmond county? A. Yes, sir.

Q. Are there any tenement houses in that district? A. No, sir.

Mr. Mullen — What do you mean by "in that district;" do you mean the eighth district, or do you mean Hart Park? A. I mean Hart Park.

Mr. Mullen — Then I submit, if the chairman please, that the counsel should ask, "in Hart Park," and not "in that district," because Hart Park is not a district; it is merely a park within the eighth election district.

Mr. Kiendl — How are these cottages in that place called Hart Park kept? A. Kept by the owners.

Q. One or more families? A. One family generally.

Q. Are you acquainted and familiar with all the residents of that Hart Park district? A. I am, sir.

Mr. Mullen — I object to the term "district," because Hart Park only forms a part of the eighth election district.

Mr. Kiendl — That is conceded.

The Chairman — The committee understands the Hart Park district to mean the election district in which Hart Park is contained.

Mr. Kiendl — Do you know a man by the name of Hamilton Brown, Sharon avenue, at Hart Park? A. No, sir.

Q. How far is Sharon avenue from your place of residence? A. From my residence, two blocks; it is a portion of Hart Park.

Q. How many houses are there on Sharon avenue, in Hart Park — I mean at the time of the election? A. There were five.

Q. And you know that there is no such person as Hamilton Brown living on that avenue? A. I do.

Q. At that time? A. At that time.

Q. Do you know a man by the name of H. E. Wright, Forest avenue, Hart Park? A. I do not.

Q. Is there such a person living there? A. No.

The Chairman — Was there in November, at the time of the November election? A. No, sir.

Mr. Kiendl — How many houses were there on Forest avenue in November, 1893? A. There were two in that eighth district.

Q. Do you know a person by the name of A. K. West, Sharon avenue? A. There is no such person.

Q. Did any such person live there in November last? A. No.

Q. Were you a watcher in the eighth election district of the town of Castleton? A. In the ninth.

Q. Where did you go to the election polling place? A. At the close of the polls.

Q. At what time? A. As near as I can remember, about half an hour before the polls closed. I do not remember exactly what hour it was.

Q. Was the voting still going on at the time you arrived there? A. The polling place was open for voters, but no votes were tendered.

Q. What did you do after you got there? A. After a short conversation with Mr. Tully, who was standing on the steps of the polling place, I went inside —

Q. Who is Mr. Tully? A. He is the county treasurer; I went inside and took my place within the guard rail, as a duly appointed watcher.

Mr. Mullen — I object to it unless he produces his authority.

The Chairman — The latter part of the answer may be stricken out; the words "a duly appointed watcher."

Mr. Mullen — I object to the witness testifying to anything he did in that polling place within the rail until he produces his authority before the committee to show that he was entitled to go in there as a watcher.

The Chairman — The committee will take proof of the facts. He may state what actually occurred.

Mr. Mullen — I desire an exception.

Mr. Kiendl — Did you have a certificate? A. I did.

Q. By whom was that certificate signed —

Mr. Mullen — I object as not the best evidence. They must produce the certificate.

The Chairman — I do not think it is competent to prove the contents of the certificate unless you interrogate him in respect to it.

Mr. Kiendl — I can show that he had a certificate and produced it there at that time, and there is evidence in the case, under an admission of McNamee, who was the chairman of the general committee, that he did issue a certificate, and that Mr. De Morgan was acting under that certificate.

Mr. Mullen — May it please this committee, it is time we should be heard upon this kind of evidence.

The Chairman — I would ask if any admission of that sort is in this case.

Mr. Kiendl — Mr. Taylor and I agreed yesterday in reference to Mr. McNamee, who was here in court, and who was anxious to get away, that his evidence in the Assembly case should stand; the case of McGuire, should stand as the evidence in this case, and with that understanding Mr. McNamee left the court.

Mr. Mullen — I desire to say as one of the contestants, although I am represented by counsel, that if I was represented by counsel who would take the stipulation of this man McNamee, or his word, unless he was put under the most solemn obligation to tell the truth, I would at once repudiate being represented by any counsel who would attempt to stipulate my rights away in that manner. I say that I do not admit nor concede any of the facts which the gentleman has stated my counsel agreed to accept, and I protest against it, because it would take a large stretch of the imagination and conscience for me to believe the testimony of Mr. McNamee under oath, much less under his word of mouth.

Mr. Taylor — What Mr. McNamee said was, that he was simply to testify as to the name changed on the roll; that he had found the roll correct in every other respect. I was willing to admit that.

Mr. Mullen — You do not admit what the counsel stated to the committee that you would concede that to be true?

Mr. Taylor — No, sir; there was no such intention. It was not brought up.

Mr. Kiendl — I say Mr. McNamee did go away, and that was I understood to be —

The Chairman — The committee are not able to enforce any verbal stipulation of that sort.

Mr. Kiendl, resuming:

Q. Now, Mr. De Morgan, you had a paper there at that election polling place, the ninth district, as I understand it. A. I did.

Q. Did you produce that paper? A. I did.

Q. To whom did you hand that paper? A. To the inspector.

Mr. Taylor — I object to this; there is no evidence of what that paper was.

The Chairman — They cannot prove everything by one witness. We will take the statement of facts.

Mr. Kiendl — Do you remember the name of the inspector?  
A. Mr. Blatchford.

Q. Is Mr. Blatchford now on the Island, to your knowledge?  
A. I cannot say.

Q. Do you know whether inquiry has been made for Mr. Blatchford, or about Mr. Blatchford's whereabouts? A. I believe so.

Q. Do you know whether he was found or not? A. He was not found, as far as I can ascertain.

Q. Now, after you handed that paper to Mr. Blatchford, what took place; what was said and done?

Mr. Taylor — I object to it as incompetent and immaterial.

Objection overruled and exception taken by Mr. Taylor.

A. Mr. Tully stepped up to the inspector and asked that I should be excluded from the room on the ground —

Mr. Taylor — He is testifying to something Mr. Tully did. There is no evidence that Mr. Tully was an election officer, and nothing to show that Mr. Tully had any jurisdiction over this man.

The Chairman — We are going to take the proof of the occurrence upon that occasion. If you wish to interpose an objection, the stenographer will note it.

Mr. Taylor — I object to the testimony and ask to have it stricken out on the ground that there has been no foundation laid for it; that it is immaterial and incompetent.

Objection overruled, motion to strike out denied and exception taken by Mr. Taylor.

Last answer of witness, as far as given, was read by the stenographer.

A. — that I held a certificate signed by the Republican committee, while I was personally a Democrat. I showed my certificate again to the inspector and insisted on my right to remain. Mr. Tully again spoke and ordered the inspector to have me removed, and called upon the police officer, Devlin, to remove me. The police officer looked to the inspector and asked him should he do so. I did not hear any words spoken, but immediately the police officer came to me and told me I must leave the building. I told him I had a legal right to remain, and Mr. Tully had not, inasmuch as Mr. Tully was not an election officer and I was. He said: "I am sorry, Mr. De Morgan, but I am compelled to do my duty, and, unless you go out, I shall have to use force." He led me to the door and opened the door, and I left the building, and immediately the door was closed. I returned later with counsel, Mr. Hubbel, a lawyer from the town of Castleton, and demanded admission. The door was still locked, but was opened about two inches by the police officer, who, as soon as he saw me, said: "Mr. De Morgan, I told you you could not come in, and you can't." The door was again slammed to and locked.

Q. At the time you were removed from the building —

Mr. Mullen — I object to the form of the question.

Mr. Kiendl — At the time you were removed from the building, was Mr. Tully in the room? A. He was.

Q. Did he remain in the polling place after you left?

Mr. Taylor — I object to that. I do not see how this witness can testify to what took place after he left.

Objection overruled and exception taken by Mr. Taylor.

A. He did.

Q. Now, did he come out of the polling place after you left the polling place? A. He did not.

Q. Was there any fault found with your certificate? A. Not the slightest.

Q. Except what you have already stated? A. Not the slightest in my presence.

Q. Was there any fault found by either of the inspectors with the form of the certificate? A. The inspectors never said a word in reference to it.

Q. They did not make any objection that the certificate was not signed by the proper officers? A. No.

Q. At the time that you entered the polling place they had not yet commenced to count the votes, had they? A. They had not.

Q. Was this statement made by you that Mr. Daily had no right

to enter an objection, as he was no election officer or inspector, made in the hearing of the inspectors? A. It was; it was made to the inspectors.

Q. When you returned the second time, who opened the door? A. The police officer.

Q. Was that the same officer that ejected you? A. It was — Mr. Mullen — I object to the form of the question.

Objection overruled and exception taken.

Q. Do you declare that the door was locked or unlocked? A. To the best of my belief it was locked; we could not turn the handle any way. We could not open it.

Q. You tried to get in and found you could not? A. We could not.

Q. Now, when you returned the second time, do you know whether Mr. Tully — the gentleman you have reference to as Mathew Tully, is he not? A. Yes, sir.

Q. That is the gentleman you have been speaking of? A. Yes, sir.

Q. Was he there the second time you returned? A. He was.

Mr. Mullen — We object to it as a repetition of the same testimony.

Mr. Kiendl — Have you in your possession the certificate that you had upon that day? A. I have not. It was produced before Justice Cullen, and marked as an exhibit in the Assembly cases, and I have not seen it since.

Q. You are sure that you have not had it in your possession since that time? A. I have not had it in my possession since that time.

Q. What time was it that you returned there the second time — how long a time had intervened? A. About half an hour.

Cross-examination by Mr. Taylor:

Q. Mr. De Morgan, how long have you lived in Richmond county, Staten Island? A. I have lived in Richmond county thirteen years.

Q. Have you lived there continuously? A. Continuously.

Q. How long have you been a citizen of the United States? A. Nine years nearly.

Q. When were you naturalized? A. In September or October, 1885.

Q. Were you naturalized on Staten Island? A. No. Before Justice O'Gorman, of New York.

Q. Did you ever run for the Assembly, or put in nomination for the office of Assemblyman? A. I did.

Q. When was that? A. In 1887.

Q. Were you a naturalized citizen at that time? A. I was; I had been two years.

Q. You say the door was unlocked; what door was that? A. The door to the polling place.

The Chairman — Mr. Kiendl, will you be kind enough to inform the committee about how much more evidence the contestants will probably offer? Can you give us some idea of the probable time that will be consumed in the introduction of the proof on the part of the contestants in this case?

Mr. Kiendl — I could not say exactly. There are quite a number of witnesses, and it will depend somewhat upon the time consumed in cross-examination.

The Chairman — Are we likely to complete the evidence of the witnesses on the part of the contestants before to-morrow night?

Mr. Kiendl — I should hope so, yes; for instance, in one case here is a man away, Mr. Bunker, that we have been talking of. I know that we cannot get him. He is away at sea. Unless your committee has decided upon that point, before you, about the introduction of the documentary proofs in the case of the State department —

The Chairman — We have not decided to receive that evidence, unless some effort is made to procure the attendance of Mr. Bunker.

Mr. Kiendl — We have made it.

The Chairman — Do not let us digress. The object of the inquiry is to ascertain whether we shall be prepared to take up the second district contest to-morrow.

Mr. Taylor — I suppose that the second district was to be taken up to-morrow, and even if the contestants should close their cases we should want some time to put in a sworn answer to the proof in this case.

The Chairman — So I understand. I understand you will not be prepared with your side of the case to go on immediately.

Mr. Taylor — We will not. We have a large number of witnesses to examine. We suppose that the other side would subpoena the election officers of Gravesend. We would like to have them.

The Chairman — The committee will announce, for the benefit of those who are interested in the contest in the second district, that no testimony will be taken to-morrow in that case; but the com-



mittee will hear any arguments which may be made in respect to the character of the specification and answers and any preliminary work of that sort which it is necessary to do prior to the commencement of the actual taking of the testimony. That the committee will dispose of to-morrow morning at ten o'clock before taking up the present case. I suppose some one can represent the contestants there for the purpose of any questions such as I suggest to-morrow, and we then will endeavor to fix a time when we may proceed and take the testimony in that case.

Mr. Taylor, you may proceed with your examination.

Mr. Taylor, resuming:

Q. Mr. De Morgan, what door do you say was locked? A. The outside door of the polling place.

Q. Where was this polling place? A. It stood within some private grounds; it stood within a field about six or eight feet from the main road.

Q. Was it a temporary structure? A. A temporary wooden booth for that purpose.

Q. With only one entrance? A. One entrance only.

Q. At the time you appeared there, did you have a certificate with you? A. I did.

Q. Did you show that certificate to the election inspectors? A. I did.

Q. Did you tender it to them? A. I showed it to them.

Q. Did you offer it to them? A. I held it out before them; I did not say "take it," but I showed it to them.

Q. Where were you at that time? A. Within the guard rail at the polling place.

Q. And that guard rail separated the election officers and the votes, the ballot-boxes from you? A. Not the election and election inspectors within the guard rail. Outside of the guard rail was supposed to be for the general public.

Q. What space was there outside of the guard rail? A. About as near as I can remember, three feet wide, running the width of the building, about fourteen feet.

Q. The building was about fourteen feet wide? A. Three by fourteen.

Q. What space was there back of the guard rail? A. Between the guard rail and election boxes.

Q. The rest of the room what space was there? A. About fourteen by twenty. I should say, within the guard rail.

Q. And where were the inspectors then? A. The election

inspectors were sitting at the table, that is, Mr. Blatchford was not; Mr. Blatchford was standing in front of the table, the others were sitting down.

Q. Did you tender your certificate as a watcher to the inspectors or to the police officer there? A. To the inspector?

Q. Which one? A. Mr. Blatchford.

Q. Was the Republican watcher there? A. Yes; not in the building at that time.

Q. Where was he; did you see afterwards? A. I saw him before I went in; he was helplessly drunk.

Mr. Taylor — I move to strike out that remark of the witness as calling for his conclusion, and not being responsive to the question.

The Chairman — You may strike out the last part of the answer.

Q. Now, Mr. De Morgan, did you see any Republican watchers in there when you went in the room? A. I did not.

Q. How many were in the room? A. Some half dozen.

Q. Outside of the election officers? A. Outside of the election officers.

Q. Did you know who those men were? A. I know that Mathew Tully was one.

Q. Outside of him? A. The other persons I could not tell of my own knowledge.

Q. Did you know whether they were watchers with watchers' certificates? A. I know they were not.

Q. How do you know that? A. I know it by knowing who were appointed watchers by the Democratic and by the Republican party.

Q. Do you know that these men were in there — do you know of your own knowledge that these men were in there? A. Do you mean the Democratic watchers?

Q. Any of the watchers? A. I do not know whether they were there or not.

Q. Do you know whether there were six — were there that many? A. I know there were not six. The six that I am speaking of are those outside of the election officers.

Q. Have you been subpoenaed to produce your certificate here? A. I was not.

Examination continued by Mr. Mullen:

Q. You say you know there were no Republican watchers present at the time the count was made of the ballots, do you know

that fact? A. I know that Mr. Orrin Dennis, my colleague, was outside of the building.

Q. At the time the canvass was being made, he was outside of the building? A. He was outside of the building.

Q. Who were the Democratic watchers? Do you know? You say you knew who they were? A. I knew that they were appointed.

Q. How did you know they were appointed; were you present when they were appointed? A. I was not.

Q. You knew it by rumor? A. I know it as a matter of belief.

Q. By rumor? A. By rumor, yes.

Q. You mentioned a colleague of yours; that was outside, a Republican watcher; will you kindly repeat the name? A. Orrin Dennis.

Q. Was you present at the Republican general committee when he was appointed? A. I was not.

Q. Did you ever see his certificate of appointment? A. I did.

Q. When? A. Upon that day; I handed it to him in the morning myself.

Q. You gave it to him? A. I gave it to him.

Q. He folded it up? A. I cannot tell you.

Q. Who put his name in there? A. Mr. Branniff, the secretary of the Republican committee.

Q. Did you see him do it? A. No; but he told me he did.

Q. Who gave it to you? A. Mr. Howard Payne.

Q. Who is he? A. The chairman of the organization of the Richmond County Democrats.

Q. By that you mean the chairman of the mugwump, the anti-snappers of Richmond county? A. Anything you like; reformers generally.

Q. How many other hands did it pass through from the Republican general committee before it reached the hand of your associate, do you know? A. To that I could not say.

Q. Did it have a rather fresh appearance when it reached your hands, or did it look to be worn or weary? A. It looked to be very fresh.

Q. How long did you keep it before you delivered it to your associate? A. I suppose about a half hour. The time it took me to reach the ninth district.

Q. When did you deliver it to him? A. At the opening of the polls or a few moments after.

Q. In the morning? A. In the morning.

Q. Was he sober then? A. He was.

Q. And are you prepared to swear before this committee that he

did not exhibit that certificate at that time to the inspectors of election in that district? A. No, I am not.

Q. The fact is you know that he did, do you not? A. No, I do not.

Q. Did you exhibit yours? A. When I went.

Q. In the morning? A. I did not go in the morning.

Q. Why did you wait until night to go, if you had a certificate appointing you a Republican watcher, will you tell this committee why you were not at the polls at least fifteen minutes before the polls were opened in the morning? A. Yes, I will.

Q. Tell then. A. The reason was I accepted the position of watcher on the understanding that I should only be there during the count. The district is one consisting entirely of sailors —

The Chairman — You have answered the question.

Mr. Mullen, resuming:

Q. You say you did not attend in the morning at the opening of the polls at all? A. I did not.

Q. You were not there during the day while votes were being cast? A. I was not.

Q. And you did not go until the time you supposed the polls would close? A. That is so.

Q. And you sent no information to the inspectors of election of that district that you had been appointed a watcher for the Republican party during the day, did you? A. Mr. Orrin Dennis did, certainly.

Q. Did you send any word? A. The two names are on the one certificate.

Q. Were you present when Mr. Dennis handed the certificate in? A. No, I was not.

Q. Do you know that he showed his certificate to the inspectors? A. No, I do not.

Q. And all that you do know, in fact, is that you came there with a certificate at the time that the polls were to close; and that was the first time that you informed the inspectors that you were a watcher? A. Officially, yes, sir.

Q. That you demanded the right to go in there and participate in watching the canvass; that is a fact, is it not? A. It is.

Q. Now, will you tell the committee what particular member of the board of inspectors you showed that certificate to? A. Mr. Blatchford.

Q. Was Mr. Blatchford inside or outside of the rail at the time that you showed it to him? A. He was inside the rail.

Q. Did you not testify a short time ago that when you showed it to him he was outside of the rail? A. I said from behind the table, standing in front of the boxes.

Q. Did you testify a short time ago that when you showed your certificate to Mr. Blatchford he stood outside of the rail? A. No.

Mr. Mullen—I call upon the stenographer to go back and inform the committee whether the witness so testified or not.

The Chairman—The committee can ascertain that when they come to read the evidence.

Mr. Mullen, resuming:

Q. Now, you feel positive that he was inside the rail and outside of the table? A. Outside of the table.

Q. Describe to the committee what you did in showing the certificate to Mr. Blatchford? A. I took the certificate from my pocket, unfolded it, and went up to Mr. Blatchford and said: "I am appointed here a Republican watcher, with Mr. Orrin Dennis." Then it was that Mr. Tully protested.

Q. What did Mr. Blatchford do then? A. He didn't say anything.

Q. There were two other inspectors there, were there not? A. Yes.

Q. Did you show it to either of them? A. No, I didn't.

Q. Where were they? A. They were behind the table.

Q. Within your reach? A. Within my reach.

Q. You could have reached across the table and showed it to them? A. Yes, sir.

Q. You knew that one of those inspectors of the three was the Republican inspector, did you not? A. Yes, sir.

Q. Which one is that? A. I could not tell you.

Q. Did you ask for the Republican inspector? A. No, I did not.

Q. Did you undertake to show it to any one other than Mr. Blatchford in the perfunctory manner that you describe? A. I showed it to Mr. Tully.

Q. He was not an inspector? A. He was the ruling spirit.

Q. He was not an inspector, was he? A. No.

Q. I am asking what you did with the other inspectors? A. I have told you—I showed it to the inspectors.

Q. You didn't undertake to show it to any of them, except Mr. Blatchford? A. I had no time.

Q. I do not want to know your reasons. A. I say I did not.

Redirect-examination by Mr. Kiendl:

Q. Mr. De Morgan, your associate was Mr. Dennis? A. Mr. Dennis.

Q. You say that you saw him in the evening or about the time that the polls closed? A. I did.

Q. What condition did you find him in at that time? A. He was intoxicated.

Mr. Mullen — We object to that. We are not responsible for the Republican watcher getting drunk. We object to it as evidence against us in this case.

The Chairman — The committee will take the fact.

Mr. Kiendl — Did you see Mr. Muller there at the time that you were at the polling place during that day? A. I saw him at the eighth election district. I saw Mr. Sheriff Muller.

Q. What time of the day was it that you saw him? A. Two or three times I saw him during the day at the eighth election district.

Q. Did you see him in the evening at the time the polls closed? A. No, I did not.

Q. Do you know who was the chairman of the board of inspectors? A. Mr. Blatchford.

Mr. Mullen — You did not see Mr. Sheriff Muller perform any high crimes or misdemeanors that day at the polls, did you?

Mr. Kiendl — I did not ask anything about that.

Mr. Cromwell, recalled:

Cross-examination by Mr. Taylor:

Q. Mr. Cromwell, as I understood you to say, you did not go to the polls until after all the election officers were there? A. No, sir.

Q. What party were you appointed by? A. The Republican party, sir.

Q. And the poll clerk appointed by the Democratic party was there, was he? A. He was, yes, sir.

Q. After you got down to your duties you were given certain names to give a number to, is that it? A. Yes, sir.

Q. And what was said to you when you were given these numbers that you put opposite these names? A. Nothing, sir; I got the names from the inspectors and the numbers from the ballot clerk.

Q. You did not put any names on the book of people who had not voted while you were there? A. I put no names on the book, except it was called out by the inspector.

Q. You testified to names being in the book that were not in

your handwriting in that book; you did not put these there? A. No, sir; I did not.

Q. You found them there when you came in the morning? A. Yes, sir.

Q. And the numbers you got from whom? A. From the ballot clerk.

Q. You say you got additional names that you put on the book? A. Yes, sir; every name that I entered on the book I received from the inspector.

Q. Those were people who came into vote? A. Yes, sir.

Q. Were you away during the day? A. No, sir.

Q. Did you go away for your meal? A. No, sir.

Q. So that the only names, or the only numbers that you got for names that you had not written down were names that were on the book before you got there in the morning? A. Yes, sir.

Q. What district is this? A. The ninth district.

Q. The ninth district of Castleton? A. Yes, sir.

Q. Where did you live on Staten Island? A. At Sailors' Snug Harbor.

Q. Are you an inmate of the Sailors' Snug Harbor? A. Yes, sir.

Q. How long have you been there? A. About three and one-half years, sir.

Q. So that you were there about three years previous to last election? A. Yes, sir.

Q. How many inmates are there there? A. Well, I am sure I cannot tell you the exact number, sir; eight hundred and odd.

Q. And the eight hundred and odd are all male citizens? A. Yes, sir.

Q. You do not know all of these people, do you? A. I do not.

Q. What proportion of them do you know? A. Well, I don't suppose I am acquainted with more than half a dozen, or a dozen, at the most.

Q. So that you were not acquainted with the people that voted there at this election last November, are you? A. No, sir.

Q. And there might be such a thing as three or four men of the same name in that Harbor, and you would not know? A. That is very true, sir.

Q. Was your attention called to the names of two persons here—I forget what that name was? A. Peterson, I think, sir.

Q. M. M. Peterson and Nicholas Peterson; do you know these gentlemen? A. No, sir.

Q. You do not know either of them, do you? A. Not M. M. or Nicholas particularly; I know a man by the name of Peterson.

Q. You simply know there is one Peterson in the Home?  
A. Yes, sir.

Q. You do not know whether there are three or four of your own knowledge? A. No, sir; I could not say.

Robert Burkhart, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Burkhart, where do you reside? A. At Coney Island.

Q. You are known as Robert Burkhart, Sr., are you not?  
A. Yes, sir.

Q. Did you vote at Coney Island on November last? A. Yes, sir.

Q. In what district did you vote? A. In the second district.

Q. What time of day did you vote? A. About nine o'clock.

Q. What time did you leave your house? A. About eight o'clock.

Q. How long did it take you to go to the polling place? A. I went down to my business first and then I went up to the polls.

Q. It was about nine o'clock when you voted? A. It was somewhere around there; it may have been a little later.

Q. Was your number 724? A. I do not know.

Q. Now, when you got there, was there a line formed or not?  
A. Well, yes, I guess there was; there were some people there.

Q. How many election booths were there in the room where the voting took place? A. There were six altogether; three on each side.

Q. All the election places or voting places are in one building, are they not? A. Yes, sir.

Albert D. Hodges, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Hodges, where do you reside? A. Sailors' Snug Harbor, Staten Island.

Q. How long have you resided there? A. About four years.

Q. What is your occupation there? A. I am chief clerk in the governor's office.

Q. Are you acquainted with the inmates of Sailors' Snug Harbor? A. With many of them.

Q. Do you keep a record of the names of persons who are inmates? A. Yes, sir.



Q. Do you know a man in the Harbor, who was in the Harbor in November or October, 1893, by the name of John Davidson?

A. I suppose I am permitted to refer to my memorandum.

Q. Yes, sir.

Mr. Taylor — What is the memorandum? A. Copies of the record.

Mr. Kiendl — Made by you? A. Made by me.

Mr. Taylor — I submit that that would be no identification of the man, looking at a list of names.

The Chairman — He may state whether there was a man known by that name at that time.

Former question read by stenographer, as follows:

Q. Do you know a man in the Harbor, who was in the Harbor in November or October, 1893, by the name of John Davidson?

A. I do.

Q. When, if he left the Harbor, did he leave? A. He left November 3, 1893.

Q. And when did he return? A. On December 3, 1893.

Q. Where did he go? A. He went to Boston.

Q. Was he in the Harbor on election day? A. He was not.

Q. Was he away on a leave of absence? A. He was away on one month's leave of absence.

Q. Do you know J. C. Hine or Hayne? A. I know there is a party of that name on the record of the institution.

Q. Was he an inmate of the Harbor in October or November, 1893? A. He was not.

Q. Where was he at the time? A. He was transferred to the New Jersey State Hospital for the Insane April 10, 1893.

Q. Was he there on November 7, 1893? A. He has remained at the asylum since he was transferred.

Q. Has he been at the Harbor since that time? A. No, sir.

Q. Do you know a man by the name of William Jenkins or did you know such a man? A. There were two parties of that name on the record.

Q. What became of them? A. One of them died February 20, 1880, and the other died November 9, 1884.

Q. Do you know W. H. Mirro, or Morrow? A. I know a W. W. Morrow.

Q. Was he in the Harbor in October or November last? A. He left the Harbor November 20, 1882, and is still away.

Q. Was he in the Harbor on November seventh, on election day? A. He was not.

Q. Do you know, or did you know, a person named A. W. Shaw, or similar name? A. There was an A. W. Shaw, who died July 3, 1892; the only one on the record.

Q. He was not in the Harbor in November or October, 1893? A. He was not.

Q. Do you know a person by the name of Pat Shea or Peter Shea? A. Peter Shea died August 17, 1893.

Q. There was no such person in the Harbor in November or October, 1893? A. There was not.

Q. Do you know a man by the name of John Sothern, or John C. Sothern? A. John Sothern died December 17, 1892.

Q. No such person in the Harbor in November or October, 1893? A. No, sir.

Mr. Mullen — If the chairman please, I would like to know whether it is the purpose of the committee to go on with the hearing to-morrow?

The Chairman — It is the present purpose of the committee to go on with the hearing, unless something occurs to change that determination.

Mr. Kiendl, resuming:

Q. Was there such a person in the Harbor in October or November, 1893? A. There was not.

Q. Do you know a person, or was there such a person as James Stewart in the Harbor? A. There was — I beg pardon, James Stewart left the Harbor November 3, 1893.

Q. Has he returned to the Harbor since? A. He returned to the Harbor later.

Q. Was he in the Harbor in November or October, 1893? A. I say he left the Harbor November 3, 1893.

Q. Was he in the Harbor November seventh? A. He was not.

Q. Where did he go? A. He went to the Naval Home of Philadelphia.

Q. And since that time he has returned to the Harbor? A. He has been readmitted.

Q. Do you know a person by the name of James Stetson? A. I know a person by the name of Joseph Stetson.

Q. Was he in the Harbor in October or November, 1893? A. He left June 12, 1893, for Liverpool.

Q. And has he returned to the Harbor? A. Yes; he returned this year.

Q. When did he return? A. He returned last month; I do not know the date.

Q. Do you know a man by the name of G. Westerman? A. I do.

Q. Was he in the Harbor in October or November, 1893? A. He was not; he left the institution July 14, 1893, for New York.

Q. He has not returned? A. No, sir.

Q. Do you know a person by the name of Ed or Edward Evans at the Harbor? A. I know there was an E. Evans.

Q. Was he in the Harbor in October or November, 1893? A. He was.

Q. Is there any other person by the name of Evans but this E. Evans? A. Not that I know of.

Q. Do you know a man by the name of John Foster at the Harbor? A. There were two John Fosters on the record.

Q. What became of them? A. One died June 13, 1877; the other died November 25, 1887.

Q. Both dead? A. Yes, sir.

Q. Do you know a man by the name of W. Freeman at the Harbor? A. There are several of that name on the record.

Q. What became of the W. Freeman? A. I say there are three W. Freemans on the record.

Q. What became of them? A. One left the institution February 23, 1888.

Q. Has he returned? A. He has not.

Q. What became of the other two? A. One died February 20, 1880. It is only two that I have down.

Q. You have only two? A. I have only two.

Q. And you have mentioned what became of these two? A. Yes; one left the institution February 23, 1888, the other died, as I say.

Q. Do you know a man named Albert Hughes? A. No, I do not.

Q. Is there any such person at the Harbor? A. There is not.

Q. Do you know any one by the name of E. F. Hughes, or a similar name? A. There is an E. F. Hughes, or was, at the Harbor, and there was an E. Hughes, who died in 1884.

Q. Do you know a man by the name of J. Hopkins, or J. A. Hopkins? A. J. Hopkins died March 7, 1887.

Q. Is there any other name of Hopkins on the record. A. There is not.

Q. Was there any such person at the Harbor in October or November, 1893? A. There was not.

Q. Do you know any person, or did you know any person at the Harbor named W. A. Haney or Haney? A. There is W. H. Haine in the institution.

Q. Only one person by that name? A. Only one person by that name.

Q. Was he in the Harbor on November 9, 1893? A. He was.

Q. Do you know a man by the name of W. H. Healey? A. No such name appears on the record.

Q. Was there any such person there in November or October, 1893? A. There was not.

Q. Do you know a man by the name of Martin Johnson, or Johnston, at the Harbor? A. There is no such name on the record.

Q. Was there any such man on the record or in the Harbor in November or October, 1893? A. There is a similar name—Michael Johnson, who died August 16, 1892.

Q. That is the only person of a similar name? A. It is.

Q. Do you know a person by the name of William Jackson at the Harbor? A. There is no William Jackson at the Harbor.

Q. Was there in November or October, 1893? A. There was not.

Q. No similar name? A. There is John Jackson and Henry Jackson.

Q. No others? A. There is all I have record of.

Q. No William? A. No William.

Q. Do you know a man by the name of Tim Kenny in November or October, 1893, at the Harbor? A. There was not.

Q. Is there any similar name? A. There is a Henry Kenny at the Harbor.

Q. Was he there in November or October, 1893? A. He was.

Q. Was there a man at the Harbor named William Kerr in November or October, 1893? A. No such name appears on the record.

Q. Any person at the Harbor named Andrew Little in November or October, 1893? A. No such name on the record.

Q. Any person named William Little at the Harbor at that time? A. William Little died November 30, 1885.

Q. Any person at the Harbor named Martin Lawrence, or Lawrence Martin, in November, 1893? A. No such name on the record.

Q. Any person at the Harbor in October or November, 1893, named Charles McCarty? A. No such name appears on the record.

Q. Any similar name? A. Nothing similar to Charles; there were McCartys, with other initials.

Q. Was there at any time a man named Berrett Marks, or Marks Berrett? A. No, sir; no similar name on the record.

Q. There was not in November or October, 1893? A. No; he is not an inmate.

Q. Have you looked carefully for that name? A. I have.

Q. Is there any person at the Harbor, or was there in November or October, 1893, named M. M. Peterson or Patterson? A. There is no M. M. Patterson; there is an M. M. Peterson.

Q. How does he spell it? A. Peterson.

Q. M. M. Peterson? A. Yes, sir.

Q. And no other but that one? A. No; there is a William Patterson.

Q. There is no M. M. Patterson? A. No, sir.

Q. Was there any such person just mentioned in the Harbor in November or October, 1893? A. No such person as M. M. Patterson; but there was M. M. Peterson.

Q. Was there any such person as T. W. Rayne at the Harbor in October or November, 1893? A. No such name appears on the record.

Q. Was there any person named B. Russell, or Benjamin Russell, at the Harbor in November or October, 1893? A. Benjamin Russell died August 25, 1872.

Q. No other person of similar name? A. There is an N. M. Russell.

Q. Was there a person in the Harbor in November or October, 1893, named Charles T. Smith? A. There was a Charles F. Schmidt.

Q. Was he at the Harbor in November, 1893? A. Yes, sir.

Q. There is no Smith? A. No Charles F. Smith.

Q. Was there any such person as J. O. Whalen at the Harbor in October or November, 1893? A. No such name appears on the record.

Q. Was there any such person as Ed. or E. D. Watson at the Harbor in November or October, 1893? A. There was an E. Watson. He was at the Harbor in November, 1893.

Q. No E. D. Watson? A. No E. D. Watson.

Q. Was there any such person at the Harbor in November or October, 1893, as J. Armstrong? A. There was a party by that name on the record. He left the institution January 14, 1893, and is still absent.

Q. Where did you hear from him last? A. St. Johns, New Brunswick.

Q. Was there any such person at the Harbor as N. Paul or Nelson Paul? A. He left the institution July 12, 1893.

Q. Was there any such person at the Harbor in October or November, 1893? A. He has not returned.

Q. When did you hear from him last? A. I heard from him about a month ago.

Q. Where was he then? A. In New York city.

Q. Was there any such person at the Harbor in November or October, 1893, as F. Jobbs? A. He left the institution October 23, 1893.

Q. He was not there in November or October, 1893? A. No, sir.

Q. Was there any such person at the Harbor as William French in October or November, 1893? A. There is no William French on the record.

Q. Is there any similar name? A. There is George French and an Aleck French.

Q. Is there such a person at the Harbor as John Goff, or John Gough? A. There is a John Gough; no John Goff.

Q. Any other Goff but John Gough? A. That is the only one.

Q. And there was no other of that name in November or October, 1893? A. No, sir.

Q. Is there any person named W. Onderdonk at the Harbor? A. There is.

Q. Is he at the Harbor at the present time? A. He is at the Harbor at the present time.

Q. Is there a person at the Harbor by the name of C. S. Britton? A. I will have to look at my index. (Witness examines book.) There is a George Britton; I do not find any C. S. Britton.

Q. Is there a person by the name of J. Allen or James Allen at the Harbor, or was there in November or October, 1893? A. There is a James Allen.

Q. Any other? A. I do not know whether he was there or not in 1893.

Q. Do you know whether there was a person at the Harbor J. Coventry? A. Yes, there is such a name.

Q. W. J. Cook? A. There is an Ed. H. Cook; I do not find the other.

Q. A. G. Dunbar, or G. Dunbar; and, if so, what became of him? A. G. Dunbar was transferred to the New Jersey State Hospital for the Insane February 20, 1893.

Q. He was not in the Harbor then in November? A. He was not.

Q. J. S. Davis; was there any such person as that at the Harbor in November or October, 1893? A. There was a John L. Davis.

Q. No other? A. There is Joseph Davis, Thomas Davis, I. S. Davis; that is all.

Q. Was there any such person as Charles Francis at the Harbor in October or November, 1893? A. Yes, sir; there is a Charles Francis on the record.

Q. Is there a person by the name of William Palmer at the Harbor? A. There is a Thomas A. Palmer.

Q. Is there such a person as D. Graham at the Harbor, or was there in November or October, 1893? A. There is a Henry Palmer.

Q. Any other? A. That is all. What is the other name?

Q. D. Graham? A. There is a John Graham, a John W. Graham, Newell Graham; that is all.

Q. Is there any such person at the Harbor, or was there in November or October, 1893, as Jonathan Harbeck? A. There is a Jonathan Harbett.

Q. No Harbeck? A. No, sir.

Q. Is there any such person at the Harbor as Charles Brown or Charles F. Brown? A. There is a John Brown, John Brown No. 2, Henry Brown—he is dead—John Brown No. 3, James Brown, Charles Brown, John R. Brown, James Brown, Charles S. Brown, James Brown No. 2, William F. Brown, John Brown No. 4, Joseph L. Brown, Franklin H. Brown, George C. Brown, Charles Brown, Charles Brown again, Joseph Brown, William Brown and William Brown again.

Q. Those are all the Browns in the Harbor in October and November, 1893? A. Yes, sir.

Q. Is there a person by the name of Charles Challemore in the Harbor? A. There is V. F. Challemore.

Q. Is there more than one person by that name? A. No, there is not; he died February 20, 1894.

Q. Is there a person by the name of J. Green or John Green? A. There is a John Green.

Q. Is there more than one John? A. There are two John Greens.

Q. Were there more than two at the Harbor in November or October, 1893? A. No, sir; there was not.

Q. Is there any person by the name of J. A. Hall at the Harbor? A. Yes, sir.

Q. Was there more than one J. A. Hall at the Harbor in October or November, 1893? A. That is the only one.

Q. Was there a person by the name of W. H. Hutson at the Harbor in October or November, 1893? A. There was not.

Q. Was there more than one W. H. Hutson at the Harbor at that time? A. There was not.

Q. Was there any similar name? A. There is a W. H. Hughes.

Q. That is the nearest thing to it? A. That is the nearest thing

Q. Was there any person at the Harbor in October or November by the name of O. Norman? A. There was.

Q. Was there more than one? A. Only one.

Q. James Putnam? A. There was.

Q. Was there more than one? A. There was not.

Q. Or a similar name? A. No, sir.

Q. Look at the name of Charles Roberts. A. There is a Charles Roberts.

Q. More than one? A. No, sir.

Q. Was there in November or October, 1893? A. There was not.

Q. Look at the name Reading, S. A. There is Samuel Reading.

Q. Is there more than one Samuel or S. Reading, or was there at the Harbor in November or October, 1893? A. There was not.

Q. Look at the name Sanderson, J. S. A. There is J. S. Sanderson.

Q. Was there more than one J. S. Sanderson at the Harbor in November or October, 1893? A. There was not.

Q. Look at the name of A. E. Whalen or E. Whalen. A. There is an Edward Whalen.

Q. More than one? A. No, sir.

Q. Was there more than one in October or November, 1893? A. There was not.

Q. How does he spell his name? A. Whalen.

Q. Is there any person in the Harbor, or was there in October or November, 1893, by the name of Whaley or Wallen? A. No, sir, there was not.

Q. Is there any such person at the Harbor as Francis Aston, or was there in November or October, 1893? A. There was.

Q. Was there more than one? A. Only one.

Q. Is there such a person as John Allen or Thomas Allen at the Harbor, or was there in October or November, 1893? A. There is a John Allen and a James Allen.

Q. Was there more than one of each? A. No, sir.

Q. Were they both inmates of the Harbor in November or October, 1893? A. Yes, sir.

Q. Just give us all the Browns there are. A. I think I have given you all the Browns.

Q. The record you have before you is kept by you, is it not? A. Yes, sir, it is kept by myself and an assistant.

Q. And in the case of the death or removal or absence of the person in the institution, they are noted upon that book, are they not? A. Upon this and other books.



Q. And you make these entries yourself, usually? A. Yes, sir.

Q. And do you know these entries to be accurate and correct?  
A. Yes, sir. Otherwise it is simply carelessness.

Q. Look at the name of H. C. Burch, see if any such name appears upon the record? A. There is an H. C. Burch.

Q. Was he an inmate of the institution in October or November, 1893? A. He was.

Q. Is there more than one H. C. Burch? A. No, sir.

Q. Look at the name of Charles H. Brooks, is there any such name upon your book? A. Yes, there is.

Q. Charles H.? A. Charles H. Brooks.

Q. Is there more than one? A. Only one of that name.

Q. Joseph Brooks; is there more than one Joseph upon that book? A. There is only one of that name.

Q. You find Joseph Brooks at the institution? A. Yes, sir.

Q. Do you find a James Brooks or J. Brooks? A. That is the only J. Brooks — the one I have called.

Q. Now, state whether there is a W. H. Belcher at the Harbor, or whether there was in November or October, 1893? A. There was.

Q. Was there more than one, or is there more than one, such person? A. There was not.

Q. Such a person as James H. Cromwell at the Harbor in November or October, 1893? A. Yes, sir, there was.

Q. Was there more than one? A. No, sir.

Q. Look for the name of Cuffin, or Cofflin, or a similar name.  
A. There is a Thomas Cufflin.

Q. Is there any other similar name to that? A. That is the only one.

Q. Do you find any name of Peter Coughlin? A. Yes, there is a Peter Coughlin.

Q. Is there more than one? A. No, sir.

Q. Do you find the name of Thomas Davis at the Harbor?  
A. Yes, sir.

Q. Do you find more than one at the Harbor? A. John H. Davis, John L. Davis, Joseph Davis, J. S. Davis and Charles Davis: that is all.

Q. Are those all the Davises? A. Yes, that is all, sir.

Q. All there were at the Harbor in November or October, 1893?  
A. Yes, sir.

Q. Now, look at the name of Early, Peter; see if you find more than one such name in the Harbor in October or November, 1893?  
A. There is a Peter Early and a John Early.

Q. Those are the only ones? A. Those are the only two Earlys.

Q. Look for Aleck Freeman, and see if you find such a name in the Harbor in October or November, 1893. A. There was.

Q. Was there more than one such person in the Harbor at that time? A. Only one Aleck Freeman.

Q. And the given name was what? A. Alexander.

Q. Was there any person by the name of John Freeman at that time at the Harbor? A. Yes, sir.

Q. More than one? A. Only one, John Freeman.

Q. George Foster; was there such a person at the Harbor in November or October, 1893? A. Yes, sir.

Q. Read what Fosters there are, please. A. George Foster, M. C. Foster—sent to Morris Plains September 16, 1893—Edward Foster, John L. Foster; that is all.

Q. These are all the Fosters that were in the Harbor in November and October, 1893? A. Yes, sir.

Q. W. H. Griffith or a similar name? A. W. H. Griffin is the only similar name.

Q. Is that the only similar name? A. That is the only similar name.

Q. That was in the Harbor in October or November, 1893? A. Yes, sir.

Q. Look at the name Huzza. A. There is a William Huzza.

Q. Is that the only one of that name that you find? A. Yes, sir.

Q. That was in the Harbor in October or November, 1893? A. Yes, sir.

Q. Charles Hendrickson; was there any such person in the Harbor in October or November, 1893? A. There was Uriah Hendrickson, and Hendrick Hendrickson, and Charles Hendrickson; that is all.

Q. Was there such a person at the Harbor as Stephen Haskell in November or October, 1893? A. There was Stephen D. Haskins.

Q. No Haskell? A. No, sir.

Q. Is there any such person at the Harbor as Hayes, Hays or Haze? A. There was John Hayes and Thomas Hayes.

Q. Were there any other persons at the Harbor at that time by the name of Hayes? A. No, sir.

Q. Look at the name of Johnson, or Jansen; please state the Christian names you find that were in the Harbor in October or November, 1893. A. Amos Johnson, John Johnson, Joseph Johnson, John Johnson No. 2, Peter Johnson, Charles Johnson, John Johnson No. 3, John Johnson No. 4 and Andrew Johnson.

Q. Are those all the persons that were in the Harbor at that time?  
A. That is all I find, sir.

Q. Do you find the name Jackson at the Harbor in November or October, 1893? A. Henry A. Jackson, James W. Jackson, John Jackson; that is all.

Q. Do you find any person by the name of William Jarvis?  
A. Yes, sir.

Q. That was there in November or October, 1893? A. There is a William Jarvis.

Q. Any others? A. And an F. H. Jarvis.

Q. Any others? A. No, sir.

Q. Was there a person in the Harbor in October or November, 1893, by the name of H. S. Libbie, spelled with an I or an E?  
A. Yes, sir.

Q. More than one? A. No, sir.

Q. How is that spelled? A. Lebby; Henry S. Lebby.

Q. Is there such a person at the Harbor as Andrew Lewin?  
A. Yes, sir.

Q. Is there more than one such person? A. No, sir.

Q. Was there such a person at the Harbor in November or October, 1893, as John B. Lewis or Charles H. Lewis? A. Yes, sir; there was Charles H. Lewis.

Q. Any other? A. A John B. Lewis.

Q. Any others? A. There was a John B. Louis; there is a Benjamin Lewis; that is all.

Q. Was there any such person at the Harbor as Magee, or any similar name, in November or October, 1893? A. There is a John Magee.

Q. Any others? A. I do not find any more.

Q. Do you find any person who was at the Harbor by the name of Morrell, in October or November, 1893? A. Samuel J. Morrell.

Q. Was there any person of a similar name? A. No, sir.

Q. Melvin, William B., was there any such person at the Harbor in November or October, 1893? A. Yes, sir.

Q. Was there more than one such person? A. Only one.

Q. Munson, John W., was there any such person as Munson in the Harbor in October or November, 1893? A. John W. Munson.

Q. Thomas McGuire, was there any such person in the Harbor in October or November, 1893? A. I do not find that name; I beg your pardon, that is a Thomas McGuire.

Q. He was at the Harbor in November, 1893? A. Yes, sir.

Q. George Mason or William Mason, was there any such person

in the Harbor in October or November, 1893? A. There was a George Mason and a William Mason.

Q. Were there any others? A. No, sir.

Q. Is there any such person at the Harbor as Calvin Perkins, or any other persons with a different Christian name? A. There is a Calvin Perkins.

Q. Is that the only Perkins? A. Yes, sir.

Q. Edwin Patten, is there more than one Patten, or was there in October or November, 1893? A. There is an Edwin Patten; that is the only one.

Q. Nathan M. Russell, was there more than one Russell in the Harbor in November or October, 1893? A. Only one N. M. Russell.

Q. Was there a Benjamin Russell, B. Russell? A. No, sir.

Q. Aleck Smith, or A. Smith, was there any such person in the Harbor in October or November, 1893? A. Andrew Smith; do you want all the Smiths?

Q. Any Alexander, Aleck or Alexander W.? A. There is an Alexander M. Smith and an Andrew Smith.

Q. Give us all the Smiths—the various Christian names. A. James Smith, William Smith, John Smith, William again, John Smith again, F. C. Smith, A. M. Smith, R. C. Smith, W. J. Smith, George Smith, J. C. Smith, Henry Smith, John Smith, John Smith, Harry Smith, W. T. Smith, Joseph Smith, R. S. Smith, Andrew Smith and John Smith.

Q. These are all the Smiths that were in the Harbor in November or October, 1893? A. Yes, sir.

Q. Do you find the name of George Sodenberg in the Harbor in October or November, 1893? A. I find Francis Sodenberg.

Q. Do you find a James Thompson, Charles Thompson, who was in the Harbor at that time? A. There is George Sodenberg and Francis Sodenberg.

Q. Was there such a person in the Harbor as James Thompson or Charles Thompson in October or November, 1893? A. There was a James Thompson, Charles Henry Thompson, E. C. Thompson, William Thompson, John Thompson, William Thompson, William Thompson, H. Thompson, Martin Thompson, William Thompson, John Thompson—that is all the Thompsons.

Q. Van Brunt; do you find any person by the name of Van Brunt? A. Ralph Van Brunt.

Q. Was he the only Van Brunt in the Harbor in October or November, 1893? A. Yes, sir.

Q. Do you find any one of the name of Volpey in the Harbor?  
A. There is a John Volpey.

Q. Van Stratton, do you know any such person in the Harbor in November or October, 1893? A. Cornelius Van Stratton.

Q. He is the only one? A. Yes, sir.

Q. Do you find E. Watson? A. Yes, sir; Edward Watson.

Q. Do you find a Henry? A. Henry Watson.

Q. Any other Edward, except the only one you have mentioned?  
A. No, sir.

Q. Is there any person in the Harbor by the name of Wilcox or was there in October or November, 1893? A. James Wilcox.

Q. Was he the only one? A. He was the only one.

Q. Do you find any person in the Harbor by the name of Hayney, or was there in October or November, 1893? A. William M. Haney.

Q. Was he the only one? A. It is the only one.

Q. Do you find James M. Connor or Stephen Connor? A. James M. Connor.

Q. Do you find a person by the name of Peterson who was in the Harbor in November or October, 1893? A. There is an M. M. Peterson.

Q. Any other? A. Daniel Peterson.

Q. Is there any Patterson; M. M. Patterson? A. There is a Henry Peterson.

Q. Is there any M. M. Patterson? A. No, sir.

Q. Was there any M. M. Patterson? A. No, sir.

Q. Was there any person in the Harbor named Harbeck in October or November, 1893? A. There is a Jonathan Harbett.

Q. Was there any such person in the Harbor in November or October, 1893, as Martin Lawrence or Lawrence Martin?

Mr. Taylor—The counsel has been over every one of these names.

The Chairman—Is it a repetition?

Mr. Kiendl—No; I ask Mr. Cromwell about this man M. M. Peterson. A. There is no such name as Lawrence Martin or Martin Lawrence.

Q. Was there any such person at the Harbor as William H. or James Rogers in October or November, 1893? A. William H. Rogers, R. A. Rogers, William Rogers.

Mr. Taylor—Do you find W. H. and James both? A. No, there are two William H.'s; that is all.

Mr. Kiendl — Do you find any name of Schmidts? A. There is a Charles F. Schmidt.

Q. Is he the only one you find? A. He is the only one.

Q. Do you find or was there such a person at the Harbor as C. S. Griffin? A. There is a George Griffin.

Q. Any C. S. Griffin? A. I do not find the name.

Q. Do you find any person at the Harbor by the name of Cook? A. E. H. Cook.

Q. Any other? A. That is all; there is a J. P. Cooke.

Q. Do you find more than one Palmer at the Harbor in October or November, 1893? A. There is a Henry Palmer.

Q. Thomas A.? A. And Thomas A. Palmer.

Q. Any other? A. That is all.

Q. Alfred Dunbar — I have asked that name, I think? A. You asked G. Dunbar.

Q. There is no other? A. There is an Alfred Dunbar; he was suspended.

Q. When was he suspended? A. October 31, 1893.

Q. Do you know what became of John T. Blatchford, James H. Hewitt and Alexander Love? A. The first name, J. T. Blatchford, I do not know what became of him. The other two are at present inmates of the Sailors' Snug Harbor.

Q. Were they, or either of them, suspended from the institution?

Mr. Taylor — If the committee please, I cannot see where this is material, whether they were suspended or not. I do not think their suspension would take away their right to vote.

The Chairman — I do not suppose the evidence is offered in that view.

Mr. Taylor — I object to it on the ground that it is immaterial and remote.

The Chairman — We will take the fact in regard to that.

A. John T. Blatchford was expelled March 27, 1894. He has been absent from the institution for some time. He was expelled last month.

Q. When did he first absent himself from the institution? A. I do not remember.

Q. Was it before or after the November election, 1893?

Mr. Taylor — I object to leading the witness. The witness has said that he does not know with the record before him. I object to the question because the witness has already answered that he does not know.

Mr. Kiendl — Do you know about the time that took place?

Mr. Taylor — I object.

The Chairman — The present question we will allow.

A. He left the institution shortly after the election of November, 1893.

Q. Is Mr. Bunker at present in the institution — at Sailors' Snug Harbor? A. He left the institution this month on a leave of absence.

Q. Where is he at present? A. He went to sea.

Q. When does his leave of absence expire? A. He took liberty for a month, with the privilege of renewal.

Q. What day does that leave of absence issue; are you able to state? A. Only from recollection — the eleventh day of this month.

Cross-examination by Mr. Taylor:

Q. Mr. Hodges, do you know, of your own personal knowledge, that Mr. Bunker has gone to sea? A. Only from his statement.

Q. Only from the statement he made that he was going to sea? A. Yes, sir; and he gave the name of the vessel on which he was going, with a letter from the captain thereof.

Q. You do not know anything further than that where he is? A. I do not.

Q. What do I understand you to say your position is in the Sailors' Snug Harbor? A. Chief clerk in the governor's office.

Q. Do you reside on Staten Island? A. I reside at the Harbor.

Q. What are your politics? A. I am a Democrat.

Q. How many men are there in the Harbor? A. There are about 887.

Q. And they have leave of absence at times — they can go out and in the Harbor, as I understand, can they not? A. They can if they are not under punishment of any sort.

Q. A man who is not under punishment can go out and in the Harbor as he pleases? A. That is on the Island; if he leaves the Island, he must obtain special permission.

Q. They sometimes stay away from the institution for a time? A. They take liberty, leave of absence, sometimes for different periods.

Q. Now, that book you have been reading the names from — are the names entered in that, and how often? A. When a man enters the institution his name is entered in this index.

Q. And until he goes away there is nothing done to the record, so far as his name is concerned? A. This is simply an index of the names; we have a record that contains the history of the man

from the time he enters the institution; this is only an index of names.

Q. Then how from that index do you state whether they were there at a certain time; how can you state that? A. That is on a separate memorandum, which I have taken from the other record.

Q. And from names you were told you would be asked about? A. From names upon which I was requested to obtain this data.

Q. Sailors' Snug Harbor, is that entirely within one election district? A. No, sir; it is within the eighth and ninth.

Q. The town of Castleton is divided into two districts? A. Yes, sir; the eighth and ninth.

Q. Now, it is a fact that there are men under an alias name? A. Yes, sir; there are several entered on the records.

Q. The institution is for what? A. It is a home for aged, decrepit and worn-out sailors.

Q. It is a right that these sailors have of entering this institution on proper qualifications? A. Yes, sir; under certain conditions.

Q. It is not a charitable institution? A. It is a beneficial institution.

Q. You have men there who are retired captains of vessels, have you not? A. Yes, sir.

Q. Have you any idea how men voted from the Harbor at last election; of your own knowledge, have you any way of telling? A. Only from turning to my memorandum.

Q. What does that show; where do you get that information from? A. That is derived from an investigation which was made in the Harbor, and which I assisted.

Q. There was nothing to hinder any member of the Harbor who was a qualified elector from exercising the franchise, was there? A. No, sir; unless it may have been illness.

Q. Was there a personal registry down there? A. Yes, sir; they register at stated periods.

Q. There is not a personal registry before each election? A. No, not unless it changes at the polls.

Q. There is a poll-list there that is carried over from year to year? A. Yes, that is in our custody.

Q. I mean by the election officers? A. Yes, sir.

Q. Have you any list of names of men who have voted from the Home who were not in the Home at that time? A. No, sir.

Q. Have you made any examination or comparison of the poll-list and the names of the inmates of the Harbor? A. Yes, sir.



Q. What was the result of that examination? A. In the eighth district there were — I am referring now to the Harbor inmates —

Q. Let me ask you this: Do you find any names on the poll-list of anybody who has been credited to the Sailors' Snug Harbor, who was not at the time that he voted a resident at the Harbor, or had not been previous to that a resident of the Harbor? A. There were three names credited to inmates of the Harbor who were absent in the eighth district.

Q. But they had been residents of the Harbor? A. They had been.

Q. And all you knew was at that time they were not in the Harbor? A. I knew where they were.

Q. I say you knew they were not in the Harbor at that time? A. Yes, sir.

Q. That is in the eighth district; how do you divide up the Harbor in districts; does a district run through the building?

A. Yes, sir; that is done by the county officials.

Q. Where did the dividing line of the districts come in regard to your institution? A. Well, the hospital building was in the eighth district, and I think three of the other buildings — the buildings are lettered from A to H; I cannot tell which buildings are in each district; I do not remember — (witness refers to memorandum) — C, D, E, F and G were in the eighth district, and the others were in the ninth.

Q. What district had the largest number of the members of the Home in it, so far as the residents were concerned? A. The ninth district.

Q. The majority of the residents from there were in the ninth district, do I understand you? A. Yes, sir.

Q. Now, in the eighth district these three names that you found in the poll-list, who were not then inmates of the Home, what were their names? A. J. Armstrong, F. Jarvis and N. Call.

Mr. Taylor — Now, I have read the certified copy of the poll-list and find the name of M. Call there, and I called the committee's attention to it. The name M. Call is the second on the list as having voted six. There is no indication there that he is a resident of Sailors' Snug Harbor. There is after his name a dash and I ask the stenographer to note; the same facts exist in regard to Armstrong. There is no evidence on the certified copy of the poll-list that he is a resident of Sailors' Snug Harbor; there is a dash after it; Jarvis is down as a resident of Sailors' Snug Harbor.

Q. How long before election had Mr. Jarvis been in the institution? A. He left the institution October twenty-third.

Q. 1893? A. Yes, sir.

Q. And that was a few weeks before election, was it? A. Yes, sir; the previous month.

Q. Now, in the ninth district how many names did you find on the poll-list credited as residents of the Sailors' Snug Harbor whom you claim were not there? A. There were ten names credited to inmates who were dead, absent or at asylums.

Q. Let us have those names? A. John Davidson — I find him credited to Sailors' Snug Harbor.

Q. Where was he? A. He left the institution October third, for Boston, and returned November third.

Q. That is the record you are testifying from? A. He made the statement.

Q. To whom did he make the statement? A. To the clerk in the office.

Q. Where did you get the statement from? A. From him personally.

Q. From the clerk in the office? A. It is entered on the books of the office.

Q. That was a statement made to a clerk in the office? A. Yes, sir; and he copied it on the record.

Q. And you got it from the record? A. Yes, sir.

Q. And that is all you know of your own personal knowledge of where Mr. Davidson was? A. That is all.

Q. What is the next name? A. John C. Hain.

Q. I find here J. C. Hein; I suppose that is intended for the same man. Was there any J. C. Hein in the institution? A. No, sir; there was not.

Q. When did J. C. Hain leave the institution? A. He was transferred to the New Jersey hospital April 10, 1893.

Q. And that is the entry in the institution? A. That is a copy from the record.

Q. It is in your handwriting? A. This copy is in my handwriting.

Q. But the original entry, in whose handwriting is that? A. There are several entries made on the books; I think I entered it myself; I have not a copy of the entry here.

Q. When do you say he went? A. April 10, 1893.

Q. And have you any knowledge where he was after that? A. We have been informed that he has been discharged.

Q. I ask of your own knowledge? A. No, sir; I have no personal knowledge what became of him after he left April 10, 1893.

Q. You have no knowledge of what became of him or where he was after that? A. No, sir.

Q. What is the next name? A. W. H. Merrow, or it may be Mirrow.

Q. I find him No. 58 on the poll-list of the ninth district of Castleton. When did he leave the institution? A. He has been absent since September 29, 1893, and still is absent.

Q. He voluntarily left the institution? A. Yes, sir; he is on leave of absence, residing at New Haven, Conn.

Q. He was on leave of absence at that time? A. Yes, sir.

Q. And you do not know of your own knowledge where he was in November or October, 1893? A. I do not.

Q. What is the next name? A. A. W. Shaw.

Q. A. W. or W. A. Shaw? A. A. W. Shaw is the name on our record.

Q. How many Shaws are there on your list? A. That is the only one.

Q. There is W. H. Shaw there? A. There is no such name on our records.

Q. On your record it is A. W.? A. Yes, sir.

Q. When did A. W. Shaw leave your institution? A. July, 1892; he died in the institution.

Q. A. W. Shaw died in the institution in July, 1892? A. Yes, sir.

Q. Was there ever any W. H. Shaw? A. No.

Q. Was there any one by the name of Shay on the record of the institution? A. There is a Peter Shea or Shay; sometimes we spell it both ways.

Q. How many Peter Sheas on the record? A. There is only that one.

Q. Is there any name on the record that is near Shaw or Shay — W. H. Nichols, or H. W. or W. A.? A. Nothing similar.

Q. What is the next name? A. John Sothern.

Q. I find him as No. 72 on the poll-list of the ninth district; when did he leave the institution? A. He died December 17, 1892.

Q. Was there any other person in the institution with a name similar to that? A. No, sir.

Q. Do you know of him having any family? A. No, sir.

Q. Have you any record of where he came from, or where his people live? A. No, sir; we have on our books.

Q. Have you it with you? A. No, sir.

Q. You do not know whether he came from Staten Island or not? A. No, I do not recollect.

Q. What is the next name on the list? A. James Stewart.

Q. I find that No. 221 on the poll list; when did he leave the institution? A. November 3, 1893, Philadelphia.

Q. Of your own personal knowledge, do you know that he went to Philadelphia? A. No, sir, I do not.

Q. November 3, 1893, was three days before election? A. Yes, sir; four days.

Q. Has he been back in the institution? A. Yes, sir; he has been readmitted to the institution, and he is back there now.

Q. Do you know of your own knowledge, that he did not vote on election day? A. I do not.

Q. Nor do you know, of your knowledge, that he was not of Staten Island on election day? A. I do not.

Q. What is the next name? A. Joseph Stetson.

Q. What record have you of him? A. He left the institution June 12, 1893, for Liverpool; he has since returned.

Q. When did he return? A. February 20, 1894.

Q. He is now in the institution? A. He is now in the institution.

Q. Do you know when he got back from Liverpool of your own knowledge? A. No, sir; I do not.

Q. Do you know of your own knowledge that he went to Liverpool? A. I have a letter dated Liverpool, December 16, 1893.

Q. Whose handwriting is that in? A. It is in his handwriting signed by him.

Q. And that letter is dated when? A. December 16, 1893.

Q. And you have no knowledge of your own that he sailed for Liverpool, have you? A. The time that he took absence from the institution and said that he was going to Liverpool —

Q. I say of your own knowledge? A. No, sir.

Q. Can you state when he sailed for Liverpool? A. No, sir.

Q. What is the next name? A. G. Westerman.

Q. That is 153 on the poll-list; when did he leave the institution? A. July 14, 1893.

Q. Where did he go to? A. He went to New York city and has been there ever since.

Q. You do not know of your own knowledge whether he went to New York city, or was on Staten Island, do you? A. No, sir; I do not.

Q. He may have been on the island that day, and you not know it? A. He may have.

Q. He may have been continuously on the island ever since and you not know it? A. Yes, sir.

Q. What is the next name? A. I think you will find that is 10; I do not find any more.

Q. That is eight names you have given me in the ninth district, and three in the eighth, are there any more? A. Not unless I have overlooked some. That is all I find.

Q. To arrive at these names you have made a comparison of the poll-lists, and the records of the institution, have you not? A. Yes, sir.

Q. These eleven names that you have mentioned—you do not know of your own knowledge whether these people were on Staten Island and they voted on that election, or how they voted? A. I do not.

Redirect-examination by Mr. Kiendl:

Q. You do know that they were not residents of Sailors' Snug Harbor, do you not? You know that these people you have mentioned were inmates of the Sailors' Snug Harbor in November, 1893? A. Yes, I do—you mean that they were not at the Harbor?

Q. Yes.

Mr. Taylor—You would not say that they were not connected with the Harbor at that time?

A. I make the statement that they were not within the Harbor inclosure.

Mr. Kiendl—Sailors' Snug Harbor includes the buildings alone, does it not? A. It includes the premises of the institution.

Q. Nothing outside of that? A. Nothing outside of that.

Q. Now you say you made a canvass of the people of the institution? A. Yes, sir.

Q. Did you make a list of those who had voted, with those who had not voted? A. Yes, sir.

Q. Have you such a list? A. I have.

Q. Will you produce it? A. There are some six or seven hundred names on the list.

Mr. Taylor—What is the list? A. The men who did and did not vote in the Harbor.

Mr. Taylor—I cannot see how that is material.

The Chairman—The question of the comparison of the list of the inmates of the Sailors' Snug Harbor with the poll-lists is a matter that was brought out on your examination.

Mr. Kiendl—I have reference to the election of November, 1893? A. Yes, sir.

Q. You have such a list with you? A. Yes, sir.

Q. Will you produce it?

Mr. Taylor—What was that list made from? A. It is made from statements from the men themselves; they were asked the question whether they did or did not vote.

Mr. Taylor—I object to that; it is hearsay evidence.

Mr. Kiendl—You went into it, I did not.

Mr. Taylor—I did not go into anything of the kind; I went into the official poll-list.

The Chairman—The recollection of the committee is that the question related to the comparison of the poll-list with the list of the inmates of the Sailors' Snug Harbor and not to any canvass which the witness made. This question now calls for the production of the list of those who voted and did not vote, made from declarations in response to inquiries of these individuals.

Mr. Kiendl—I want to ask the witness the question who in Sailors' Snug Harbor were inmates of that institution that did not vote upon that day, November 7, 1893?

The Chairman—The question pending is whether he will produce certain lists that he made; we will allow him to in answering that question. A. I have a list of a synopsis.

Mr. Kiendl—You have a list? A. Yes, sir.

Q. Of the persons who did not vote? A. I have a list of the voters and the non-voters of the inmates of Sailors' Snug Harbor.

The Chairman—Do you mean by that, those who are qualified and not qualified to vote; or those who did vote, and who did not vote at the last election? A. I am referring to the inmates of the Harbor who were in the Harbor at the time of the last election and who voted or who did not vote.

Mr. Kiendl—Will you please give us the names of those who did not vote.

Mr. Taylor—I object, if the committee please, on the ground that it is incompetent, irrelevant, immaterial, and that there is no evidence before the committee that that is an official statement; that there is no evidence to show that it is anything but hearsay evidence collected by this gentleman, who is a clerk in the institution, and it can have no legal weight.

The Chairman — The committee desires to interrogate the witness in respect to the paper. Do I understand that his list is offered in evidence? Does this question come up on an offer of the list.

Mr. Kiendl — I am asking the witness to give the names of the parties who did not vote.

The Chairman — And he is about to state this from lists which you have asked him to produce?

Mr. Kiendl — Yes, sir.

Mr. Crosby — By whom were these lists prepared?

Witness — They were prepared by myself, with the assistance of others in the governor's office.

Q. Upon personal knowledge? A. Upon personal interrogation of each individual.

Q. When was that interrogation made? A. It was made shortly after the election; I do not remember exactly.

Q. About how long after election? A. I should say about a month after election.

Q. Did you have any personal knowledge of the facts purporting to be set forth in the lists? A. Only from statements to me individually, such as was stated to me; the others I had no knowledge of.

Q. Then it is made entirely from declarations from the persons whose names appear upon the lists made after the last election? A. Yes, sir.

Q. Personal statements made subsequent to the election on the 7th day of November, 1893, and from no other source. A. From no other source.

The Chairman — The committee will reserve their decision upon this question until to-morrow morning, and we will take a recess until ten o'clock to-morrow morning.

Recess until ten o'clock Thursday morning, May 17, 1894.

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#### PROCEEDINGS.

May 17, 1894, 10 o'clock A. M.

Present — All the committee.

The Chairman — The committee have decided not to take testimony at present in the second district case; and will set down the matter for that purpose for the thirty-first day of May. Have the parties been served with the petition?

Mr. W. H. Cochran — As far as I am concerned, I will say that I never have received a copy of the petition. I have received a copy of what I presume are specifications. I received those yesterday afternoon; and if the committee will allow me now to ask a question of the contestants, I think it would facilitate the further proceedings in this case. This appears to be a specification upon which these contestants are to rely. They make the general allegation that the contestees are entitled to seats, because of fraud and bribery and illegal voting, and then say, for specific objections, that there was certain bribery or fraud, or illegal voting in two districts; and they mention those districts. One is the sixth district of the Tenth Ward, and the other is the seventeenth district of the Tenth Ward. They also make the general allegation that some illegal practices obtained throughout the second district, etc. I would like to know whether the contestants are to rely merely upon the proof they are to offer as to illegal voting in the sixth and seventeenth districts of the Tenth Ward, or whether they are going to fall back upon their general allegation of fraud in the various other districts. If they are to rely upon their general allegation of fraud in other districts, and introduce proof, it is hardly fair to us. We should be informed, and if this is not their intention, I move to strike that out of the petition now. The only allegation is as to districts; and then they make the general allegation as to other districts. If there is any fraud in reference to other districts, let us be informed of it. That is all we ask of them now.

Mr. G. H. Mallory — Of course, we would rely upon any fraud that might be shown anywhere in that senatorial district, which would operate to the vitiation of the election return.

Mr. Cochran — The direction of the committee the other day was that we should be served with specifications as to what the frauds are. They have only pointed out two districts. If there are any other districts let us be informed of it now, and not have the question raised when the committee begins to take evidence. If they have any other allegations, we should be informed of it.

The Chairman — We do not think that we will attempt to lay down any rules in advance in limitation of the evidence that may be offered to us. We will consider it when it is presented.

Mr. Cochran — The question is whether we will be taken by surprise as to what they intend to rely upon.

Mr. Mallory — I do not think anybody will be taken by surprise.

Mr. Cochran — It is only fair that we should be informed of the



matter in advance; and that the committee order them to furnish us with the specifications. This very question was up before the Supreme Court of New Jersey, and there the court laid down that the specification must be full; that the petitioner must point out in his petition, not only the very districts where the frauds were committed, but what the names of the people were who committed the frauds, so that the contestees should be fully informed as to what charges were made, and be prepared to meet them. It seems to me that is exactly the condition here.

The Chairman — The committee are not disposed to make any ruling in respect to the character of the specifications, or to strike out any portion of the specifications which have been filed; and the question in respect to the relevancy or materiality of the testimony which may be offered, will be disposed of when those questions arise. Of course, a reasonable time will be given to the contestees to meet any testimony which may be offered, and to procure witnesses in rebuttal, to contradict the witnesses of the contestants.

Mr. Cochran — It seems to me that the contestants should now inform the committee whether they intend to reply upon that petition, and upon the specific allegations they have made, or are going to produce further proof of other districts. If they are going to rely solely upon those two districts, I ask the committee to dismiss the petition, on the ground that if they should prove that every vote that was cast in those two districts was an illegal vote, it would not affect the seats of the contestees at all. The votes involved in those two districts amount to only about seven hundred. If they intend to rely upon those two districts alone, I ask the committee to dismiss the petition, upon the ground that even if every vote in those districts was held to be illegal, the seats would not be affected; but if they are going to introduce other proof, we desire to be informed of it.

The Chairman — I do not think we can require them to state what proof they intend to produce. The committee is taking proof under this general protest, which was filed in the Convention the eighth of May. There have been specifications filed with the committee to-day, and served, as I understand it, upon the contestees; but the committee are here, instructed by the Convention, to take proof in support of this protest which contains allegations of a very general character, and the committee are not disposed to make any limitation at present upon the right of the contestants to produce such proof as they may be advised.

Mr. Cochran — I will say that I cannot present any answer to the petition and to the specifications of the contestants, on the ground that it is insufficient for us to base any answer upon; and let it rest there.

The Chairman — The committee will give you an opportunity to file an answer at any stage of the proceedings that you may desire.

Mr. Cochran — We can only say that we have no answer to make to the petition, because it is too insufficient.

Mr. Mallory — I suppose the gentlemen will have ample opportunity to put in any answer they may wish.

Mr. Cochran — It is nothing more or less than a fishing excursion, to see what they can find.

The Chairman — The committee has ruled, and will meet here upon the thirty-first day of May, at ten o'clock in the forenoon, when they will proceed to take the testimony of the contestants in this case.

In reference to the other case, when we adjourned last night, there were two questions reserved by the committee. One of these was upon the introduction of certain lists, which had been prepared by the witness, containing the names of inmates of the Sailors' Snug Harbor, and a statement as to whether they had voted or not. This statement was made up, as appeared, from the declarations or statements of the individuals themselves, made subsequent to the election. The committee have decided not to receive these statements. The witnesses themselves can be produced, and sworn, as they have been, on prior examinations in court, and the contestees will then have the right to cross-examination, if they see fit to do so; and the committee think they ought not to receive evidence of this character, where it is possible to procure the attendance of the witnesses.

The committee also desire me to state that they are willing, in order to promote the convenience of the public, that is the parties and the witnesses, to go down there, if necessary, to this institution, and take the testimony of these men, at such time as will suit the convenience of the parties and the members of the committee.

Another question was upon the admission of the evidence of the witness who was sworn before one of the legislative committees — the committee have decided not to permit the testimony of a witness taken on any previous investigation to be read, until it appears that proper diligence has been used to procure the attendance of

the witness. When efforts to procure the personal attendance of a witness have failed to secure that result, the committee will then consider the question of admitting testimony given by him in any prior investigation or proceedings.

Mr. Kiendl—I will make that effort, of course. I knew the fact was that we had already gone to the institution to serve this Mr. Bunker. I could prove that, if the committee wanted to take it. Mr. Deterling intended to go there with a subpoena from this committee, to subpoena this man, and he was informed at the institution that he was away, as has been already testified to.

Mr. Hodges—He is away and will not be back; he is out at sea.

Mr. Taylor—There is only hearsay evidence to the fact that he is out at sea. Let us have better evidence whether he can be found or not. We would like to make an effort to find him.

Mr. Kiendl—I cannot find the ship for you, Mr. Taylor.

Mr. Taylor—I will suggest this—that if this gentleman who is wanted as a witness has sailed in any ship, by going to the Maritime Exchange, in New York, we can find exactly where that ship is, where she sailed to and from, and where she is now. If that can be got, we want it before this committee.

Mr. Kiendl—All that we can do is to send to the place where the man resides, which we have done, with a subpoena issued by this committee, to serve upon this man; and we found out that he was at sea. Nobody followed him to find exactly what ship he took, but he was not there, and has not been there since that time; and I will now offer to call Mr. Deterling to testify that he did go there with a subpoena from this committee.

The Committee—If a subpoena of this sort has been issued, and an attempt made to find the witness, it would be proper, no doubt, to show what effort has been made, for the purpose of showing that due diligence had been used. We would suggest, however, that that question be deferred for the present, and in connection with that same suggestion we would suggest to the counsel the propriety of being provided at the proper time with the original copy of the testimony as taken by the stenographer in these investigations, or else producing the stenographer who took the testimony and his notes. In examining some of the printed testimony, we think that the printed copies contain many inaccuracies, and that is the only foundation for the suggestion which we now make.

Mr. Kiendl—I made the suggestion yesterday that I could call the stenographer who took this very testimony.

The Chairman—That would obviate a serious objection.

Mr. Kiendl—Of course, in the other case, where the sailors themselves are in the Harbor, I am perfectly willing to take the subpoena and subpoena the men.

Mr. Crosby—You gentlemen may be able to agree before the adjourned day to read the testimony.

Mr. Hodges recalled, and further cross-examined by Mr. Taylor:

Q. Mr. Hodges, I would like to ask you how long you have been living at Sailors' Snug Harbor, on Staten Island? A. Since April, 1890.

Q. Then any evidence that you have given in regard to any person being absent from that institution prior to that time is simply an extract from the books of that institution? A. It is.

Q. And these entries in the books were not made by you? A. No, sir.

Redirect-examination by Mr. Kiendl:

Q. Mr. Hodges, did you make a list by comparison with the poll-list of the people in the institution that voted at the last election, held in November, 1893? A. I did.

Q. Have you that list? A. Yes, sir.

Q. Will you produce it—

Mr. Taylor—I object to that, if the committee please. The best evidence of that is the poll-list. That is already in evidence before the committee, with the name of everybody who voted from the Sailors' Snug Harbor.

The Chairman—It is a mere matter of convenience. If he had been through and made a comparison, the committee is disposed to take it for what it is worth as an aid to them in the comparison of names; that is all. They do not accept it for any other purpose.

Mr. Taylor—Before the witness announces what this list is, I would like to ask him if this list is a list of those who are alleged to have voted, or a list of those who had voted, according to the poll-list of that election in these districts?

Mr. Kiendl—The question shows what was intended.

The Chairman—Let the witness answer this question of Mr. Taylor.

A. The list I have is a copy of the poll-list furnished me with the names of those checked who voted and who did not vote.

Mr. Taylor — Did you make up this list? A. I did, with the assistance of others.

Q. You say the list was furnished you? A. A certified copy of the poll-list was furnished me.

Mr. Kiendl — These certified copies have been identified, and are in evidence.

The Chairman — Was that comparison made from one of the copies which have been produced here? A. Yes, sir.

Mr. Taylor — I object to the introduction of this as a part of the record in this case, upon the ground that it is irrelevant, immaterial and incompetent, for the reason that the poll-list is already in evidence of these two districts. This witness has testified to who in that institution, as alleged on that poll-list, were not in the institution at the time, or not on its grounds. I claim that the witness cannot go any further than that with any list which he has prepared, and if they are introducing this for the purpose of contradicting the witness, I object, undoubtedly, because they contradict their own witness.

The Chairman — The committee wish to interrogate the witness a little about the manner in which the list was made up.

Mr. Crosby — The list which you produced — is it a transcript of the poll-list as kept by the clerk? A. It is an exact copy of the poll-list furnished me, certified by the poll clerk, or rather the clerk, Mr. O'Grady.

Q. And has anything been added to it by you; any memorandum, or data of any kind? A. Yes, sir; I have made a summary of the poll-list, showing the number of voters and non-voters and non-residents.

Q. You made a summary from the list which was presented to you? A. Yes, sir.

Q. And what does the summary purport to show? A. It purports to show the number of voters in that district that lived outside of the institution, those that lived in the institution, who were not inmates, officers or employes, those that were inmates, and those votes credited to names who did not vote, votes credited to inmates who were absent from the island —

Q. The first three classes, as appears by your summary, your information was actually derived from the poll-list, was it not? A. Well, with the comparison with the register, certified copy of the registry lists.

Q. The poll-list and registry list, which has been offered in evidence? A. Yes, sir.

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Q. Your last three classes, the fourth, fifth and sixth, your information was derived from statements made outside? A. From statements made to us from personal interrogation of the inmates and investigation of the records.

Mr. Taylor — I offer the further objection that the lists, including the poll-list, were furnished to him by some other outside party.

Mr. Crosby — You have no objection to his stating, for the purpose of investigating, aiding the committee, anything to assist us in comparison —

Mr. Taylor — I have the objection that I do not want this record cumbered with what this gentleman may have found out in any investigation that he may have made himself, or any tables that he may have prepared.

Mr. Crosby — You can certainly have no objection to this clerical testimony showing what the examination is, and footing of the poll-list and registry list shows, excluding what may have been ascertained outside.

Mr. Taylor — There is nothing official about it, and in addition to that we have his direct testimony yesterday as to what inmates of the institution were on the poll-list, as having voted, and he testifies that in district eighth, there were three; and in district ninth, there were eight. Now, if this is an attempt to contradict their own witness in this way, we object to the introduction of the evidence.

The Chairman — The committee will receive so much of this statement as is the result of the mere comparison of names upon the poll-list and registry list, and the lists of the inmates of the Sailors' Snug Harbor.

Mr. Taylor — Then I want an objection as to any comparison with the registry list. The registry list — I do not think this committee is going into that. There is no evidence that there was any illegal voting from the registry list, or any fraudulent votes cast from a registry list. That was all done previous to election.

Mr. Crosby — There are certain duties incumbent upon the inspectors to keep a record upon the registry list in regard to votes being delivered to certain voters, and that record is made on election day.

Mr. Taylor — Is this committee going into the question, for example, suppose there were one hundred irregular names, illegal names, on the registry list, and there will be no evidence before

this committee to show that any of that one hundred voted or appeared upon the poll-list; is the committee going into that?

Mr. Crosby — That does not touch the suggestion made. It is the duty of the board to keep a record of every ballot that is delivered, and to whom delivered, on election day; that record appears upon the certified list. That proof is before the committee.

Mr. Mullen — Will not the committee listen to me a moment upon this question? As I understand the question before the committee, it is this — whether or not this witness should be permitted to testify from a comparison that is made with the registry list in that district, and the names that appear upon the books of the institution.

The Chairman — And the poll-list.

Mr. Mullen — The poll-list, of course; that is a different question. Does he include the poll-list?

The Chairman — This question includes the poll-list.

Mr. Mullen — In an institution of that kind, having so many old names, there may be some names appear upon the registry list which appear there on the first day of the meeting of the inspectors as a board of registry. That is the registry list of the preceding year. The law provides that it is the duty of the inspectors of election, when they meet as a board of registry, to transfer from the preceding registry list such names as they are satisfied are entitled to vote to the new list, which they may make up for the coming election, and then they adjourn for one or two weeks, down in our county. They may have transferred every name that appeared upon the registry list of the year before, and the law requires that they shall expose it in a public place, that being the balloting place, a copy of that list which they make up on the first day of registration, and upon the second day of registration they shall meet for the purpose of correcting that registry list, and it is exposed there to the public for a week or ten days, or two weeks, so that any one may come before them on the second day of registration and correct that list. Now, *non constat*, they may have transferred every name on the list, and no one came on the second day to correct it, does it follow that because there may have been ten or fifty names transferred from the preceding year to the registry list of this year; that the fact that that registry list, on election day, had these names on it is any evidence of fraud whatever? What we are to get at here is this — to take the poll-list, showing who voted on election day, and when they show

that by the poll-list and the tally sheet of election, then they are down to a basis where they can introduce evidence to show that these inspectors of election on election day had names upon the registry list who were not residents of the district. It is then for the contestants to show that on election day they allowed some persons to vote under the names of those who were on the registry list, and who were not residents of the district. That is the point. Were there any illegal votes cast, and if so, point them out.

Mr. Crosby—Mr Mullen, it seems to me, as a member of the committee, that your argument is remote from the question. As I understand the question and what is offered in evidence, is a classification made by this witness from the poll-lists, taking the names of those who actually voted, showing how many were residents of the Harbor and how many were not residents of the Harbor of those that actually voted.

Mr. Mullen—As appears by the poll-list.

The Chairman—As appears by the poll-list.

Mr. Mullen—If the committee confines itself to that, I do not know that I have any objection.

The Chairman—That is all the committee proposes to take at present.

Mr. Kiendl—Now Mr. Hodges, have you made a comparison with the poll-list of the inmates of the Harbor in November, 1893, who voted, or were entitled to vote, at the last election? A. I have.

Q. Have you that list? A. I have.

Mr. Kiendl—I offer that list in evidence.

The Chairman—The list contains matter which the committee are not willing to receive. You had better let him state from the list the result of his comparison, of each one of these different comparisons.

Mr. Kiendl—You may do that—state the names? A. This is the summary that I stated—poll-list of the eighth district, town of Castleton; total number on the poll-list, 191, made up as follows: Class 1, voters outside of the Harbor, not S. S. H., 48.

Q. What does that mean? A. Sailors' Snug Harbor, not residents. Class 2, in the Harbor, not inmates, officers and employes, 2; class 3, voters in the Harbor, inmates, 124. Totals, classes 1, 2 and 3, 174. Summary, poll-list ninth district, total number on



poll-list, 247, made up as follows: Class 1, voters outside of the Harbor, not S. S. H., 29; class 2, voters in the Harbor, not inmates, officers or employes, 15; class 3, voters in the Harbor, inmates, 129. Total 173.

Mr. Kiendl — Now I offer in evidence the list thus classified by the witness; and this only.

Mr. Taylor — I think he has given the summary and I think that is all the committee desire.

Mr. Kiendl — I want to get the names.

The Chairman — You offer the list of names from which the summary is made.

The Witness — I have no separate list; I have a list, but it is embodied with the list of names of the others.

The Chairman — It would be a great convenience to the committee if that list were prepared in such a way as to omit the objectionable features which this list contains.

Mr. Kiendl — We will have it prepared and offer it later.

John L. Voorhies, sworn for the contestants, testified as follows:

Examined by Mr. Kiendl:

Q. Mr. Voorhies, are you, or were you, the town clerk of the town of Gravesend? A. I was.

Q. Have you in your possession the original poll-list and registry lists of the town of Gravesend? A. Yes, sir.

Q. Will you please produce them? (Witness produces papers.)

Mr. Taylor — I would like to ask Mr. Voorhies if these are the originals? A. Yes, sir.

Q. And are still in your possession? A. They will be until to-morrow, I presume.

Q. I thought they were deposited with the county clerk; the originals? A. No, sir; the statements are filed with the county clerk, but not the original poll-list or registry list.

Mr. Kiendl — Commence with the first district; the poll-list first and then the registry list. (Witness produces lists.)

Q. Is that the original poll-list in your possession as town clerk of the town of Gravesend? A. Yes, sir; when I was town clerk.

Q. The first election district of the town of Gravesend? A. Yes, sir.

Q. When was that list filed with you? A. The 7th of November, 1893.

Q. Is that your signature upon that? A. Yes, sir.

Mr. Kiendl—I offer in evidence this poll-list of the first district.

Mr. Taylor—I object to the introduction of it as immaterial, incompetent, and that there has been no foundation laid for the introduction of the poll-list of the first district of Gravesend.

The Chairman—We will overrule the objection and receive the list.

Mr. Taylor—I desire an exception.

List received in evidence and marked Exhibit LL.

Q. This poll-list of the second district of the town of Gravesend was filed with you on the 7th day of November, 1893, is that correct? A. Yes, sir; but that does not seem to be my signature there.

Q. Was that book filed with you? A. Yes, it was filed.

Q. And filed upon that day? A. Yes.

Q. Is that your handwriting? A. That part of it is, but some one must have put my name there. I suppose one of the inspectors.

Mr. Taylor—I object to this on the same ground, and on the additional ground that the witness testifies that his signature as town clerk upon this poll-list was not made nor written by him.

The Chairman—Was it filed in your office as town clerk, the town clerk's office? A. Yes, sir.

Mr. Kiendl—I offer in evidence the book.

Received in evidence and marked Exhibit MM.

Exception taken by Mr. Taylor.

Q. Will you produce the poll-list of the third election district of the town of Gravesend? A. Yes. (Witness produces paper.)

Q. That was filed in your office? A. Yes, sir.

Q. On what day? A. The seventh day of November.

Q. Does it bear your signature? A. Yes, sir.

Mr. Kiendl—I offer in evidence this poll-list.

Same objection, ruling and exception.

Exhibit marked NN.

Q. Will you produce the poll-list for the fourth election district of the town of Gravesend? A. Yes. (Witness produces paper.)

Q. Was this poll-list filed in your office on the 7th day of November, 1893? A. Yes, sir.

Q. Does it bear your signature and file mark? A. Well, that part of it there is mine, but I am not positive about that. It does not seem to be my signature.

Q. Was that book filed with you upon that day? A. Yes, sir.

Mr. Kiendl — I offer it in evidence.

Mr. Taylor — I make the same objection, and the additional objection that the town clerk's name to the certificate of filing, as admitted by him, is not his signature.

Same ruling and exception.

Paper marked Exhibit OO.

Q. Is the poll-list now produced by you of the fifth election district of the town of Gravesend the original poll-list filed in your office on November 7, 1893? A. Yes.

Q. Is that your signature? A. It is.

Mr. Kiendl — I offer in evidence the poll-list.

Same objection, ruling and exception.

Paper marked Exhibit PP.

Q. Will you produce the poll-list of the sixth election district of the town of Gravesend? (Witness produces paper.)

Q. Is this the original list filed in your office on the 7th day of November, 1893? A. Yes, sir.

Q. Is that your signature? A. Yes, sir.

Mr. Kiendl — I offer in evidence the poll-list.

Same objection, ruling and exception.

Paper marked Exhibit QQ.

Q. Will you produce the registry of electors of the first district of the town of Gravesend for the year 1893? A. Yes, sir. (Witness produces paper.)

Q. Is that the original list filed in your office? A. Yes, sir.

Mr. Kiendl — I offer in evidence that list.

Same objection.

Mr. Taylor — I would like to ask Mr. Voorhies when these registers of electors were filed with him? A. Filed with other papers on the 7th day of November, 1893; they all came together.

Q. All filed at one time? A. Well, different times, in different districts.

Q. Were they all filed on the same day? A. Yes, sir.

Mr. Taylor — I make the same objection, and the additional objection to the introduction of the registers, that they contain

the names of the registry of voters who had voted at an election previous to 1893, and had been carried over on the registry lists of that year, and they are immaterial to this issue, as they have no relation to the evidence of any fraudulent votes being cast at the election of 1893.

Objection overruled and exception taken by Mr. Taylor.

Paper marked Exhibit RR.

Q. Is this the registry list of the voters of the second district of the town of Gravesend, filed in your office, November 7, 1893 (presenting paper to witness)? A. Yes, sir.

Mr. Kiendl — I offer in evidence that registry list.

Same objection, ruling and exception.

Paper marked Exhibit SS.

Q. The registry list now produced is the registry list of the third district of the town of Gravesend? A. Yes, sir.

Q. Is this the original list filed in your office on the 7th day of November, 1893? A. Yes, sir.

Mr. Kiendl — I offer it in evidence.

Marked Exhibit TT.

Q. Will you produce the registry list of the fourth election district of the town of Gravesend? (Witness produces paper.)

Q. Is this the original list of electors for the fourth election district, filed in your office on November 7, 1893? A. Yes, sir.

Mr. Kiendl — I offer it in evidence.

Same objection, ruling and exception.

Mr. Taylor — I make the additional objection that there is no evidence offered to show that there is any statute or law requiring the filing of these registry lists with the town clerk of Gravesend.

Same ruling and exception.

Paper marked VV.

Q. Registry list of electors of the fifth election district of the town of Gravesend? A. Yes, sir. (Witness produces paper.)

Q. Is this the original list filed in your office on the 7th day of November, 1893? A. Yes, sir.

Mr. Kiendl — I offer it in evidence.

Same ruling, Mr. Taylor having objected, and exception.

Paper marked Exhibit VV.

Q. Registry list for the sixth election district of the town of Gravesend, now produced, is it the original registry list of the

sixth election district of said town, and filed in your office November 7, 1893? A. Yes, sir.

Mr. Kiendl — I offer it in evidence.

Same objection, ruling and exception.

Paper marked Exhibit WW.

Q. Have you now in court the statement or returns, canvassers' returns, of the election in the town of Gravesend? A. Yes, sir.

Q. Will you produce the one for the first district? (Witness produces paper.)

Q. Is this the result of the general election held in the town of Gravesend on November 7, 1893, and filed in your office? A. Filed November 7, 1893.

Mr. Kiendl — I now offer it in evidence.

Mr. Taylor — I make the same objection.

Same ruling and exception.

Marked Exhibit XX.

Q. You now produce a statement of the result of the election in the second district of the town of Gravesend; is this the original statement filed in your office on the 7th day of November, 1893? A. Yes, sir.

Mr. Kiendl — I offer it in evidence.

Same objection, ruling and exception.

Marked Exhibit YY.

Q. The statement now produced is the result of the general election held November 7, 1893, in the third election district of the town of Gravesend? A. Yes, sir.

Q. It was filed in your office on the 7th of November, 1893? A. Yes, sir.

Mr. Kiendl — I offer it in evidence.

Same objection, ruling and exception.

Marked Exhibit ZZ.

Q. Is this statement of the result of the election of the fourth election district of the town of Gravesend the original filed in your office on the 7th day of November, 1893? (Presenting paper to witness.) A. Yes, sir.

Mr. Kiendl — I offer it in evidence.

Same objection, ruling and exception.

Marked Exhibit A 3.

Q. Statement of result of election held in the fifth election district of the town of Gravesend, is this the original filed in your office? (Presents paper to witness.) A. Yes, sir.

Q. Was it filed on the 7th day of November, 1893? A. Yes, sir.

Mr. Kiendl—I offer it in evidence.

Same objection, ruling and exception.

Marked Exhibit B 3.

Q. Is the statement of the result of the election for the sixth election district of the town of Gravesend filed in your office November 7, 1893? (Presents paper to witness.) A. Yes, sir.

Mr. Kiendl—I offer it in evidence.

Same objection, ruling and exception.

Marked Exhibit C 3.

Q. Mr. Voorhies, do you know the number of registered voters—can you tell it by an inspection of the registry lists in each of the districts?

Mr. Taylor—I would like to ask the witness if he has made a calculation? A. The certificate shows.

Mr. Taylor—Then the best evidence is the paper itself.

The Chairman—Let the witness answer the question asked by Mr. Kiendl whether he can tell from the registry the numbers. If he can tell, I think the committee will permit him to tell.

A. No more than from the certificate that the inspectors have signed.

Mr. Kiendl—You can tell from the registry list, can you? A. Well, the certificate is here.

Q. Will you kindly state the first district first? A. Well, there was in addition to this our spring election. I can give the fall right here. I suppose I would need to count up the spring.

Q. I do not want the spring; I want the fall. A. 753 in district No. 1, it shows.

Q. Now district No. 2. While you are looking at the book, does that show the voters who were added on the second registration? A. Yes, October 21 and October 28. I took the list—

Mr. Kiendl—That contains all the registered voters up to that time?

Mr. Taylor—I object to the question of counsel, as being a list of voters.

Q. Does that contain the names of all people who registered

and those that were added in accordance with the law on those two days? A. Upon those two days.

Q. And it does not contain those that were added at the spring election, that is, last spring you have reference to, is that right?

A. Well, it has the list here, but it has not been added up. This seems to be the registry of March 29, 1894.

Q. That is a separate list? A. That is a separate list.

Q. Now, will you kindly take the second district? A. It gives the names here —

Q. We do not care for that. Kindly take the second district now? A. Two thousand four hundred and sixty — I do not know whether that is "4" or "5" — there is a blot there.

Q. What, in your best opinion, is it? A. 2,464, I should say.

Q. Now the third district, please; what is the number of registered voters in the third? A. 1,490 in district No. 3.

Q. Now, will you kindly take the next district, the fourth? A. 610.

Q. Now please look at the fifth, and state what is the number of registered voters in that district? A. 792.

Q. What is the number of registered voters in the sixth election district of the town of Gravesend? A. 470.

Q. Now kindly look at the statement of returns for the first election district, and give us the vote on the constitutional delegate, district delegates? A. The whole number was 446, of which Mr. Riggs received 390; Mr. Curren, 390; Mr. Kinkel, 390; and the others 51.

Q. Now will you kindly look at the returns for the second election district? A. Here is something more. There are scattering votes.

Q. How many scattering votes? A. Five all together.

Q. Now look at the vote for the second election district of the town of Gravesend, and state what vote the district delegates received in that district, starting with Mr. Riggs, please? A. Mr. Riggs received 1,512.

Q. And the others the same number? A. No, Mr. Curren, 1,502; Mr. Roderick, 1,502; Mr. Mullen, 1,502; Mr. Fitzgerald, 1,502.

Q. What did the other delegates receive? A. Four of them received ten; and one of them did not receive any.

Q. Now will you please state the returns for district delegates in the third district? A. 851; they are all 851. The others are all 13.

Q. Now I will show you the returns for the fourth district?  
A. 360 for Riggs and the others; 10 for the others.

Q. Now will you refer to the fifth election district and state the result there? A. 196 and 32.

Q. Now will you please state the result of the vote for the district delegates in the sixth election district? A. 206 and 47.

Q. Now, Mr. Voorhies, will you please describe to the committee how the polling places are situated in the town of Gravesend, or were, in November, 1893? A. They were all at the town hall. They were all held there in six different places.

Q. Six different polling places were all held in one building?  
A. In one building.

Q. There were partitions? A. Yes, sir.

Q. Do you know how many feet each room is in width and length? A. About fifteen feet; from fourteen to fifteen feet.

Q. Is this a map that was issued by the town officials showing the different election districts in the town of Gravesend? A. It was at that time, yes.

Q. Has there been any change, or was there any change, in the election districts in November, 1893? A. No, sir.

Mr. Taylor—I object to the characterization of this map by the counsel as a map issued by the town of Gravesend.

The Chairman—The counsel did not characterize it; he asked the witness if that were the fact, and the witness said it was. Proceed with the examination of the witness.

Mr. Kiendl—Now, Mr. Voorhies, at the second election district, do you know how many election booths there were provided for voters? A. They all had, I think, five or six; I am not positive; it is a question put to me so often, I want to be sure.

Q. Can you describe to the committee how the room was arranged—this room that you have described? Was there any guard rail there at the election? A. There were tables and a guard rail.

Mr. Taylor—I suggest the counsel let him describe it without leading him.

Mr. Kiendl—Please describe the entrance to the building? A. There were three entrances on the north and south side of the building; three from the neck road, as we call it, and three from the south side, through an alley leading up from Gravesend avenue.

Q. There were how many entrances all together? A. Six.

Q. One entrance to each polling place? A. Yes.



Q. And only one door to each polling place? A. Yes, sir.

Mr. Kiendl — I offer in evidence the map.

Mr. Taylor — I object to it. I desire to ask the witness a few questions.

Q. The map that you have before you, Mr. Voorhies, you do not mean to say that map was issued by the town authorities? A. Yes; there were quite a number issued at that time, when the districts were cut up; a large number of them.

Q. How were they issued by the town authorities? A. By order of the board that districted the town.

Q. This map bears the title "Supplement to the Kings County Journal;" what is the Kings County Journal? A. It is a paper issued.

Q. Published where? A. It is published in Brooklyn here, I believe; it is Mr. Oberton's paper; his office is in Fulton street.

Q. Is it a public newspaper? A. Published weekly.

Q. A weekly newspaper published in Brooklyn? A. Yes.

Q. And circulated where? A. All through the county towns.

Q. Is it a political paper? A. I cannot answer that question; I think it is not; I think it takes both sides; I do not think it is a political paper; I won't say positively, because I don't know.

Q. You do not know what its politics are? A. No, sir.

Q. Do you know who made this map? A. No, sir; the original probably was made by a surveyor.

Q. Did you have anything to do with getting up this map? A. No, sir.

Q. Then of your own knowledge you cannot say that this is an official map prepared by the county of Kings, or by the town of Gravesend? A. It is the copy prepared from the official map.

Q. Do you know of your own knowledge? A. I do not know of my own knowledge, but there was a great number issued at that time.

Q. But you had nothing to do with preparing the map? A. No, sir; I cannot say that I had.

Q. Are you the town clerk? A. I am not, now.

Q. But at the time this map was issued, you were the town clerk? A. Yes, sir.

Q. Have you searched in your office for any official map of which that is a copy? A. I will have to give the same answer that I did the court; I did search and could not find it, because it must have been mislaid or something of that kind.

Q. Did you ever see the original map, of which that purports to be a copy? A. I think I did.

Q. Will you swear you did? A. I won't swear; no, sir.

Q. You never compared it with the original? A. No, sir.

Mr. Taylor—I object to the introduction of it.

The Chairman—Are you acquainted with the town of Gravesend? A. Yes, sir; I was born there and always lived there.

Q. Are you acquainted with the election districts as they existed in November last? A. Yes, sir.

Q. Does that map represent the election districts as they existed in November last? A. It does.

The Chairman—We will overrule the objection, and receive the map in connection with the testimony of the witness.

Mr. Taylor—We except to the reception of the map, on the ground that there is no foundation laid for its admission, and that the witness has not given any evidence to show that he has compared it with any original, or made any examination to know that it contains the election districts of the town of Gravesend.

Received and marked Exhibit D 3.

Mr. Kiendl, resuming:

Q. Will you please state the result of the vote on the Associate Judge of the Court of Appeals, as returned by that record, the second election district, town of Gravesend? (Presenting Exhibit YY to witness.)

Mr. Taylor—I object to this as immaterial and incompetent, and that it is only cumbering the record.

The Chairman—The committee will require all these papers which have been offered in evidence, for their use in considering these questions, and they will be in the custody of the Sergeant-at-Arms of the Convention, until such time as the Convention gets through with the determination of the questions for which they are necessary.

Mr. Kiendl—I will withdraw it then.

Charles H. Murch, sworn for the contestants, testified as follows:

Mr. Kiendl—Where do you reside? A. 599 Lincoln street, Twenty-fifth Ward, Brooklyn.

Q. What is your business? A. Dealer in real estate.

Q. Do you remember election day in November, 1893? A. Yes, sir; quite well.

Q. Were you at the town of Gravesend any part of that day?  
A. Yes, sir.

Q. At what time of day did you get down there? A. I got to the town hall about 10:30.

Q. Were you at the second election district upon that day?  
A. Yes, sir.

Q. Will you describe to the committee where the second district election was held upon that day? A. Well, there were six districts, and they all voted in one hall; I was all around the hall, as far as I could go; in front of the hall and on the side of the hall was a passageway; there were also doors in the passageway; there were some six or eight doors around the building, I think, altogether; there is one district comes in here, and another in here, and another in here, and another in here, and another in there, and another in here, making six all told; it forms somewhat of the shape of a balloon, with the top part large, and the smaller part would represent the town hall of Gravesend.

Q. Are the election polling places all in one room, partitioned off; was there one room, and then partitions in that room? A. Well, I didn't get inside of the hall; they would not allow me in there — but since then I have been there; I was down there on the day they tested their machinery, in reference to casting so many votes in so many minutes.

Q. You have been in the hall, have you? A. I understand that they had a passageway, inside, in the center —

Q. Never mind what you understand —

The Chairman — The question is, have you been in the hall?  
A. Since election.

Q. You were in front of the second election district on election day, in front of the polling place? A. Yes, sir.

Q. Did you see people going into that polling place? A. I saw crowds of people standing in front of the building, in crowds, in the street, on the sidewalks and steps, and all around the booths on the outside.

Q. During the time that you were there did you see any long line, or any line of voters? A. No, sir; no line at all; only mobs.

Mr. Taylor — I object to the witness characterizing it.

The Witness — Crowds standing in bunches; no regular line.

Mr. Kiendl — Where were those crowds standing? A. All in the front of the hall; some in the passageway, some on the side street, some at the hotel opposite, and all around a general hurrah around the middle of the street and railroad tracks.

Q. Did you see any line of voters that came out of the door, such as would come out of the first or second election district?

A. No, sir.

Q. How long a time were you at the polling place? A. I guess it must have been an hour and a half or two hours; around there.

Q. During the entire time that you were there, was there any long line of voters? A. No, sir.

Q. Were there any people standing immediately in front of the door waiting to go in and vote? A. I could not tell whether they were waiting to go in, but they were all standing in crowds, as I said, and all talking to one another, talking politics.

Q. Did you notice how frequently people went in and out of the second election district? A. Well, in all the time I was there I never noticed anybody going in at all; they were all on the outside.

Q. In the second and the third? A. In the second and the third; right around the front and the side part, where the second comes in.

Q. During that time you say you didn't notice any one going in or coming out? A. I didn't notice anybody going in or coming out.

Q. If there had been a continuous line of voters there, you would have noticed the people coming in and out? A. Of course; I was right on the corner; stood on the corner talking to John Y. McKane.

Q. What were you there for? A. I was there to help my party.

Q. Who was with you upon that day? A. William H. Friday, our Member of Assembly.

Q. He was a candidate for re-election at that time? A. Yes, sir; Mr. Gaynor and the remainder of the ticket.

Q. Was there any particular reason for your going down there upon that day, and staying that length of time? A. Well, sir; we have heard so much and seen so much in the papers —

Mr. Taylor — Never mind what you heard and saw in the papers.

A. We went there to see whether there was an honest vote cast.

Q. You say you did not go into any of the election booths? A. Only on the outside booths; there were six booths on the outside, on the road.

Q. How many doors were there to each election place or booth, one door? A. Well, on the outside there was one door on the outside; but on the inside, of course, I could not say.

Q. There was only one door from the outside? A. In front

there was a pair of double doors, and on the side there were three or four doors — I didn't count them all, and on the passageway I think there were a couple of doors there; if I had the map here, I could show you, or I can draw one here, I think.

Q. I hand you Exhibit D 3 (presenting the exhibit to witness).

A. Well, I think there is a pair of double doors there, and a door there, and a door there, and, if I am not mistaken, on the rear end there is a door there, and a glass-top door in here, a glass-top door there, and I think there is a pair of double doors there; I am not positive about that; there is a stanchion here, and a door each side of the stanchion.

Q. How many doors or places of entrance were there on November seventh to each election polling place? A. I suppose they went in those doors — I didn't notice, because they stood all around in here in groups and crowds; I could see the polling places on the outside.

Q. Was there any large number of people there, or people coming there? A. I saw a great many coming — they came with stages, with teams and some single wagons, and common wagons — four-wheeled wagons.

Q. And when they got there, would they separate to different places? A. They came driving in on the main road from the boulevard to the town hall, because I know I hallooed to one crowd of them that were in a stage; I guess there must have been fifteen, or there may have been more — I hallooed to them to vote for Friday, and they told me to go to hell; they told me in a way that I supposed they were a lot of dagoes working on the sewers.

Mr. Taylor — I move to strike out the record as to witness' opinion of the people down there.

The Court — It may be stricken out.

Mr. Kiendl — Did you make an examination or canvass of the voters and residents of the town of Gravesend?

Mr. Taylor — I object to that.

The Court — The witness may answer the question.

Mr. Taylor — I object to it as incompetent and immaterial.

Objection overruled and exception taken by Mr. Taylor.

The last question read. A. Yes, many times.

Q. Please tell the committee when you made the first, and what the result of your examination and canvass was.

Mr. Taylor — I object to that. There is no evidence to show when he made his canvass.

The Chairman — You had better divide your question.

Q. When did you make your canvass first? A. Between October seventeenth and November seventh.

Q. What year? A. 1893.

Q. What examination did you make — please state what you did? A. William H. Friday and myself had a horse and wagon; we drove down through Gravesend; we took in the West End and the Bowery, and from the Bowery down to Sheepshead Bay and Surf avenue; we took in the whole town, and distributed our lithographs, circulars and small cards; we went to the majority of the good class of hotels; some of them would allow us to hang up Republican bills, and some of them would not.

Mr. Taylor — I move to strike that out.

The Chairman — That may be stricken out.

Mr. Kiendl — What did you do in regard to canvassing in the second district? A. We went through the hotels, and also through the Bowery there.

Q. Now, from that canvass, what, in your opinion, is the voting population of the second district of the town of Gravesend?

Mr. Taylor — I object to the question on the ground that it is incompetent and immaterial, and that there has been no foundation laid to show that the witness has made any calculation or canvass of the voters, or anything that he can base any figures or facts that would be competent in evidence before the committee.

The Chairman — I will ask the witness a few questions.

Q. Did you make any memorandum in the course of this canvass? A. No, sir; I made no memorandum.

Q. No list of the persons you found? A. Nothing in writing; no, sir; I have been a voter in this town for thirty-four years; I have lived in it forty-five years, and I have been in the real estate business thirty years.

Mr. Taylor — I move to strike out the answer.

The Chairman — Everything not responsive to the last question asked of the witness may be stricken out.

Q. Do you state at what time you made this canvass? A. Yes, sir; between the seventeenth of October and the seventh of November.

Q. How many days were consumed in making this canvass in that district? A. I was down there eight or nine times between the seventeenth and seventh, and I went all over the same ground.

Q. Did you go over both districts completely? A. We went all over the districts; yes sir, as far as a horse and wagon would take us.

Q. How long have you been acquainted with these election districts that you mention? A. Well, ever since they have been districts.

Q. How many years? A. Well, they have been cut up into six districts; I don't know how long they have been cut up, but I know the town for forty years.

Q. You are acquainted with the people who reside there, many of them? A. Yes; I know some of the people down there, but I have not made it a study to keep the names of the people.

Q. Have you business relations with any of those people who reside down there? A. I have land for sale for people who own down there, but I have not made any sales for some years, except at Sheepshead Bay.

Q. Your business is real estate? A. Yes, sir.

Q. Buying and selling and leasing real estate? A. Most all its branches, except renting and collecting; I do not do that; I now sell, and trade, and purchase.

Q. Does your business require you to keep informed in respect to the condition of the real estate of this locality, of these two districts? A. Yes; I have a weekly record that keeps me posted in figures and everything of that kind.

Q. And the population? A. No; they do not say anything about the population, but I am down there every once in a while, and I look around and see how matters are.

Q. How frequently do you visit there? A. I was there Sunday before last.

Q. How often? A. Well, sometimes I go down there once every two weeks, and sometimes once in two months, and sometimes three or four times in a month.

Mr. Crosby — In your investigations and observations regarding the real estate you have in charge, do you keep a general observation from time to time of the growth, increase and development of the population of the locality? A. No, sir; not of the population, I do not. I only get that on my view in going down there.

Q. I am speaking of that, in making your view and observation? A. Yes, sir; of course, I always look around for anything in that way, because I am interested in that line of business, in the way of real estate, and I like to notice whether there are any new improvements going up.

Q. And in your observations and visits you did observe the increase of the residences and the growth of the population? A. Yes, sir; I have made it a business this last canvass, every time I went down there, to go through and watch the houses, and see whether they were occupied or unoccupied.

Q. How long have you had in mind the general growth and development, by reason of your business matters, of this locality in question? About how many years? A. Well, I have made it a study for a great many years. I could not say how many.

Q. How many years? A. Well, fifteen or twenty years.

Q. That you have observed this locality? A. Yes, sir.

The Chairman — We will admit his evidence.

Mr. Kiendl, resuming:

Q. Now, if you will kindly give us your opinion as to the voting population in the first district of the town of Gravesend?

Mr. Taylor — My objection is noted to this testimony as being incompetent and immaterial; that the witness has not shown himself competent to testify to any facts, or figures, or calculations that he has made whatever, or anything within his knowledge, except a conclusion, based on an occasional visit to Coney Island; and that is all inferred from his opinion, and not from any facts.

Objection overruled, as stated, and exception taken by Mr. Taylor.

Mr. Kiendl — What, in your opinion, is the voting population of the first district alone? A. I cannot tell you; not the first district.

Mr. Taylor — I would like to ask the witness if he is testifying from any memorandum?

The Chairman — He is not.

Mr. Kiendl — Now, the second district? A. As to the second district, from what I saw the eight or nine times I went through the district, I could not see over 500 votes throughout that district.

Q. The first district you do not know? A. No; I didn't pay much attention to that, but I did to the second.

Q. Does your examination include the third district? A. I went all through the whole Island.

Cross-examination by Mr. Taylor:

Q. Now, Mr. Murch, do you live in the city of Brooklyn? A. Yes, sir.



Q. Did you ever live at Coney Island? A. No, sir.

Q. Your visits to Coney Island have been made in driving down there in a wagon? A. Yes, sir; driving down there.

Q. Is it not a custom of the people who drive out of the city to drive to Coney Island? A. Yes, with a great many people.

Q. How many people do you know in the second district of Coney Island? A. Well, I know a great many people by sight; I know a good many, and talk to them, but I do not know their names.

Q. Can you mention the name of any one you know in the second district? A. Yes; Joseph Goodfellow.

Q. What part of the second district does he live in? A. He does not live far from the Bowery; I do not know what street it is, but I can go directly there.

Q. Have you been in his house? A. Yes, sir.

Q. Can you bound the second district of Coney Island? A. Well, pretty near; it takes in all the west end. If I had a map I could show it to you. I cannot give it to you from memory; but know it takes in all the west end, and the rough elements of Coney Island.

Mr. Taylor — I move to strike out "and the rough elements of Coney Island."

The Chairman — That may be stricken out.

Q. You do not know where the second district commences, do you? A. It commences this side of New Utrecht, bounded by the ocean on one side, Flatbush on the other, Flatlands on the other, and New Utrecht on the other.

Mr. Taylor — Is the second district the only part of Coney Island that is bounded by the ocean? A. No, sir.

Q. That is the best definition you can give of the boundary of the second district? A. Yes, sir.

Q. How many people of the 500 voting population of the second district can you name? A. I say five hundred voters; I did not say five hundred people.

Q. That is what I said, of the voters, how many of them can you name? A. I cannot name — I do not know their names; they keep hotels there, etc.

Q. You do not know any of them? A. I do not know their names.

Q. What time of day were you down there to the second district? A. I got down there — most generally, got down there, starting away from Brooklyn about nine o'clock, got down there about ten or

half-past ten, driving in on the Ocean Parkway. Driving up Surf avenue.

Q. How many people did you see any day you were down there? A. I could not tell; some days it was very gloomy and other days lovely.

Q. How many people did you see? A. I could not tell you.

Q. Did you see 100? A. I saw one; you asked me how many; it is impossible for me to answer.

Q. Are you sure you saw one person? A. I am sure I saw one person.

Q. Can you give us the name of that person? A. No, sir.

Q. Are you acquainted with John Y. McKane? A. I know him when I see him, and have spoken to him.

Q. You know him to speak to him? A. Yes, sir.

Q. You met him down there election day? A. Yes, sir.

Q. Where? A. At the town hall.

Q. Did you speak to him? A. Yes; we stood there talking to him.

Q. How long? A. Not very long.

Q. About how long? A. About ten minutes; yes, we were talking to him about ten minutes; we were around there longer than that; he came up and shook hands with the party, with me and Mr. Friday.

Q. Did he shake hands with you? A. He shook hands with Mr. Friday, and then shook hands with me.

Q. Did you make any complaint to him? A. No, sir.

Q. Did you say anything to him, or make any protest to him, or any complaint about illegal voting? A. No.

Q. You were not in the town hall? A. I was not inside; we wanted to go in, but they would not allow us.

Q. Did you see anybody vote? A. No, sir.

Q. They wanted you to go in? A. No, sir; we wanted to go in, and they would not allow it.

Q. Did anybody stop you from going in? A. Yes, sir.

Q. Did you make any attempt to go in personally? A. No; not personally.

Q. You made no attempt to go into the town hall? A. No, sir; we asked to go in, and they said we would not be allowed.

Q. You made no attempt? A. Yes, we did; we made a start to go in, and we met parties at the door.

Q. You, personally? A. Yes; I, personally. I went to the double doors and asked to go in, and they would not allow us.

Q. You said you didn't make any attempt? A. I mean I went

to the door, and wanted to go in, and they would not allow me to. They said I had no business there, and they would not allow me to.

Q. Did you have any business there? A. Yes, I thought I did; I was a residenter of the Sixth Assembly District; I did not know how the booth was fixed.

Q. Were you an election officer or official? A. No.

Q. Had you any right to vote there? A. No.

Q. Had you a certificate as a watcher? A. No, sir.

Q. Or canvasser? A. No, sir.

Q. You saw nobody vote there upon that day? A. No, sir; I did not see anybody vote there.

Q. And you were not inside the building that day, at all? A. No, sir.

Q. And you do not know how many lines there were? A. No.

Q. Or how many people were at the polls? A. Not inside.

Q. The people you saw were all outside? A. All outside.

Q. And there were a great many of them? A. Yes, sir.

Q. How many of the entrances to that town hall could you see at one time; how many of the entrances were within sight at one time? A. We could see the double front doors and we could see—yes, the front, and we could stand here and look at the town hall and see people in the passageway and at the front door.

Q. The entrances to that town hall were all around the building? A. All around the building.

Q. On all sides? A. On three sides; the rear is up against a little hotel, a one-story building.

Q. Did you go all around the building? A. As far as we could get.

Q. Did anybody stop you from going all around the building? A. No, sir.

Q. Did you make any complaint to any one down there that day that there was anything wrong about the voting? A. Only to Mr. Friday.

Q. And he was with you? A. He was with me.

Q. He was a candidate? A. He was a candidate.

Q. Did you make any list or any compilation of names of the people who were residents of the second district? A. No, sir; I did not take any names of anybody, but I have looked over the registry lists—

Q. Then your estimate of the number of voters in the second district is simply based upon riding down there and looking around? A. Yes, sir, and taking in the surroundings.

Q. Did you make any inquiry as to the names of the people who resided in the second district? A. No, I did not.

Q. Did you make any inquiry as to what people were entitled to vote there? A. No, sir.

Q. Your business in the town of Gravesend is simply selling property down there? A. I have property all over the county of Kings.

Q. And including some at Coney Island? A. Yes, sir.

Robert L. Brackett, sworn for the contestants, testified as follows:

Examined by Mr. Kiendl:

Q. Where do you reside? A. South Bensonhurst, town of Gravesend.

Q. What is your business? A. Bank clerk.

Q. How long have you resided at South Bensonhurst? A. Ninth of August, 1891.

Q. In what election district do you reside? A. I reside now in the eighth; but it was in November last the first district.

Q. Your town has been divided? A. Yes, sir.

Q. There are eleven election districts now? A. Yes, sir.

Q. You resided in November last in the first district? A. Yes, sir.

Q. Now, Mr. Brackett, did you make a canvass of the poll-list of the election district in which you resided, the first? A. We took the poll-list and the names of the people who live in that district we marked as being all right. The others we marked in another way.

Q. What did you do as regards making that canvass? What was done by you? A. We got a certified copy of the poll-list from the Citizens' Committee of Twenty-five.

Mr. Taylor — I object to this, if the committee please, that they got a poll-list from the Committee of Twenty-five.

The Chairman — Let us understand what the poll-list was.

Mr. Crosby — Do you mean a certified copy of the registry list? A. Of the poll-list, after the votes were cast.

Mr. Kiendl — What did you do in regard to that canvass? A. The first time that we took that we found 185 names on the list of people, who, as we knew, lived in the district; there were about twenty who were doubtful; that made 205; we allowed about twenty-five; we figured up from that, there were 230 votes in the district.

Q. Now, how did you canvass, and what did you do, as regards ascertaining who the people were in the town, aside from the fact that you lived there—how many years? A. Three years.

Q. What did you do? A. The people that went over it with me were people who had lived in the town all their lives, were engaged in active business there, and employed a number of men; I could answer for South Bensonhurst, where I resided, and they could answer for the rest of the district.

Q. Now, the result of that canvass was what? A. That we knew of only 230 voters in the district.

Q. In that canvass did you make any special inquiry in regard to certain individuals who were registered, or voted, and not in the poll-list? A. There were a number of names of voters who claimed South Bensonhurst as their residence.

Q. How many? A. I haven't a recollection of how many now; I destroyed all my memoranda.

Q. Do you know whether either of those names, parties that you discovered from your canvass did not reside in that Bensonhurst district, was William Brown? A. I can remember none of the names, except two, the names that were credited to us, names of parties that did not live there, and never had lived there, and I have dismissed them from my mind now what they were, except the two I had particular occasion to know, because they were persons of actual existence.

Q. What were their names the two——? A. George F. Kenneth and John T. Lyman.

Q. Do you remember testifying before the Senate investigating committee? A. Yes, sir.

Q. Do you remember testifying that your canvass showed that there were about twenty-three different names that you could not find in the town of South Bensonhurst?

Mr. Taylor—I object to his giving testimony that this witness has given on a similar previous occasion, on the ground that it is not the best evidence.

Mr. Kiendl—I show you the testimony of the Senate case, so that you can refresh your recollection from looking at that paper (presents paper to witness).

Mr. Taylor—That is not the record of the testimony, and I object to the witness looking at it. It is a printed pamphlet.

The Chairman—You had better ascertain whether the witness has any recollection in regard to the number first, before you attempt to refresh his memory.

A. No, I could not say that; I could remember more than twelve; that that list contained more than twelve; it may have contained more, but I do not remember it; I did not make any particular note of it; I had a memorandum, and I testified from it; but I have not thought of it since then, and I won't swear to more than twelve, but I have every reason to believe that those names that you show me are perfectly proper; but I would not want to vouch for more than twelve.

Q. You do know of twelve? A. Yes, sir.

Q. Now, Mr. Brackett, did you vote on last election day? A. On November election day?

Q. Yes. A. Yes.

Q. Now, will you please describe how the election booths are arranged in the town of Gravesend? A. Town hall faces Gravesend avenue, and on the north side is the neck road; on the south side, the Coney Island side, the district commences at the corner of the town hall, at the corner of this alley-way and Gravesend avenue; the first district is No. 1; then district No. 2, and then district No. 3; then on the neck road side the districts commence, the sixth being the nearest Gravesend avenue, then the fifth and then the fourth.

Q. They are all in one building, are they not? A. They are.

Q. And it is all one large hall, when the partitions are taken down? A. Yes, sir; I should say so.

Q. Are the polling places partitioned off on election day, and by what kind of a partition? A. Wooden.

Q. How high are the partitions run up? A. To the best of my recollection, it ran to the ceiling.

Q. Can you describe how large a room each election booth was? A. I should say about sixteen feet square.

Q. Do you know how many election booths there were arranged in each place? A. I think there were four of them in each district; possibly five.

Q. What time of day did you arrive at the election polling place? A. About half-past nine.

Q. Was there any line formed at the election booth where you voted? A. No, sir.

Q. Did you see any line formed at any of the election booths? A. No, sir.

Q. You remained there how long? A. Two hours, I should say.

Q. And during that time there was no line formed at any of the election booths? A. Not to the best of my recollection; no.

Q. And you remained there all that time, two hours? A. In the vicinity, yes, sir; within 150 feet of the town hall.

Q. Mr. Brackett, you held an election down there in April last, did you not? A. April third.

Q. Do you know the total number of the vote of the town of Gravesend at the spring election?

Mr. Taylor — I object to it as immaterial and incompetent, as to anything that occurred at the spring election.

The Chairman — The committee are of the opinion that they will take that proof for what it is worth.

Mr. Taylor — I desire an exception.

Mr. Kiendl — Can you state the total amount of the vote? A. I think there were 1,923 votes cast in the total.

Q. Have you anything to refresh your recollection, to state the total vote in the second district of the town of Gravesend? A. I think it is either 420 or 470; which of the two I do not remember.

Q. Do you know the total vote in the third election district? A. No; I do not remember it.

Q. Can you refresh your recollection from this paper? (Presenting newspaper to witness.)

Mr. Taylor — I object to this witness looking at a newspaper.

Objection sustained.

Q. Was not your spring election a very spirited, hotly contested election? A. Yes, sir; it was; every vote was gotten out.

Q. Extraordinary efforts were made to get a large vote? A. Yes, sir.

Q. By both parties? A. Yes, sir.

Mr. Taylor — I object to the evidence, and move to strike it out as incompetent.

Objection overruled; motion to strike out denied, and exception taken by Mr. Taylor.

Mr. Kiendl — Is it a fact that this really has been the most hotly contested election you have had in the town of Gravesend?

Mr. Taylor — I object to the expression of opinion by the witnesses.

Objection overruled and an exception taken by Mr. Taylor.

A. Yes, it was the most important one we have ever had.

Q. Either in the spring or in the fall? A. Yes, sir.

Cross-examined by Mr. Taylor:

Q. Mr. Brackett, how long have you lived in Gravesend? A. Since the 9th of August, 1891.

Q. You have never lived there when there was a presidential election, have you? A. In 1892, I think, we had one for Mr. Harrison.

Q. How old are you? A. Twenty-nine.

Q. Do you know anything about what efforts the people in Gravesend, who were known to be followers of John Y. McKane, made at the last election, personally? A. Yes, sir.

Q. Do you know what efforts they made personally? A. Yes, sir.

Q. How do you know what efforts they made? A. I was a candidate for office on the opposite side.

Q. I say how do you know what efforts they made personally? A. By observation.

Q. Do you know them? A. Do I know who?

Q. The people who are known as the followers of John Y. McKane? A. I know a great many of them.

Q. How many do you suppose you know? A. I suppose I know two or three hundred, about, by sight, and, perhaps, a hundred, by name.

Q. Are you speaking of the second district, or of the whole town of Gravesend in regard to the last election, the spring election? A. I do not understand your question.

Q. I say were you speaking in regard to the last, or spring election, of the second district, or of the whole town? A. In which special effort was made to get out the vote?

Q. Yes. A. The whole town.

Q. Were you down in the town continuously previous to that election? A. Yes, sir.

Q. Have you ever taken any part in an election outside of the town? A. I simply voted.

Q. You took no active part? A. No, sir.

Q. Have you ever noticed any difference between what is known as a spring election and an election where there is a State ticket or presidential election? A. In the town?

Q. Yes, sir. A. Yes, sir.

Q. Was there a difference? A. Yes, sir; very decided; there was until the last election no interest at all in the spring elections prior to this one, or comparatively little.

Q. No interest at all in the spring elections? A. Comparatively little.



Q. And this spring you think there was more interest taken?

A. This spring there was a great deal more.

Q. You say you allowed for twenty-five in the district in addition to those that you found — what do you mean by allowing twenty-five? A. That there were some people who possibly might have lived there that we did not know, and we gave an allowance of that many.

Q. Then there were some people there that you did not know?

A. Yes, sir; it proved so eventually last spring.

Q. You say you thought you knew them all? A. Yes, sir; before this last election.

Q. The spring election? A. Yes, sir.

Q. You found at the spring election that there were people who lived in that district that you did know? A. Yes, sir, apparently.

Q. That voted? A. Yes, sir.

Q. Do I understand you to say that at that spring election, the time of that spring election, that they apparently lived there? A. No; I say that in the spring election there were more votes than we had computed in the examination of the poll-list.

Q. How many more were there? A. I think there were about sixty.

Q. About sixty more? A. Yes, sir.

Q. And those sixty you had not computed? A. No, sir.

Q. Or did not know? A. No, sir.

Q. Have you any reason to doubt that those sixty resided in your election district? A. No; those were legal voters; I do not think there is any question about that.

Q. You do not think there is any question that the sixty voters you have made no allowance for, and did not know they lived in your district; you have no doubt that they were legal voters? A. I think they were legal voters; yes, sir.

Q. And yet at the canvass that you made previous to the fall election you only allowed for twenty-five that you did not know? A. It was after the election.

Q. You made the canvass after the fall election? A. Yes, sir.

Q. Even of those that you knew, you only allowed for twenty-five that you did not know in the district? A. Yes; we figured up there were about 205 voters that we knew positively, and it was possible there would be twenty-five more.

Q. How did you figure that up; did you come in contact with each one of those 205? A. We came in contact with them — the poll-list had their addresses, you know.

Q. Did you go over the poll-list in regard to the voters? A. Yes, sir; in the first district.

Q. How many did you find on the poll-list that you could not find the residences of? A. About 190.

Q. Did you make a personal examination as to that 190? A. The names were called off, and if any person present recognized it, it was checked off, and if we did not recognize, we would mark them as not being known.

Q. The mode of accounting for those 190 that you say you did not find their residence as given on the poll-list was by calling off the names? A. Their residence was on the poll-list.

Q. And you arrived at it by calling off their names, and if somebody didn't vouch for them, or say they knew them, you marked them as unknown? A. As not being a legal voter.

Q. So that your comparison and the tables you arrived at were by reading off these names, and arriving at the conclusion of their being qualified voters by somebody vouching for them? A. Except in regard to the list I testified to in the Wolcott trial; then I made personal inquiry.

Q. That you have testified to; and on the present examination you say you would swear now there were twelve? A. I say my impression is there were twelve others.

Q. Yet you say in your district the committee, or whoever had it in charge, had agreed on the number as 190? A. About that.

Q. And, of your own knowledge, you have nothing outside of what you have described as the means of getting at that 190 illegal voters; you have nothing, of your own personal knowledge, to show that they were illegal voters in that district? A. Well, of course, this list that I have is included in that 190; nothing of my own personal knowledge.

Q. All you are willing to swear to is the twelve? A. About twelve; yes, sir.

Q. In regard to the polling places on election day — how near were you to the town hall? A. All the time.

Q. Yes. A. I was in the town hall at one time, when I voted; and then I walked around the town hall with John Y. McKane; and then I was on the opposite side; for two hours I was within 150 feet of the town hall.

Q. Within 150 feet? A. Yes, sir.

Q. Were you within the lines prescribed by the Election Laws? A. At times, and sometimes I was out of it.

Q. What were you doing within the line? A. Talking to people I knew.

Q. No one interfered with you? A. Not a bit.

Q. Did you make any complaint on election day of any fraudulent or illegal voting? A. No.

Q. You made no protest to anybody? A. No.

Q. Were you an election officer of any kind? A. No, sir.

Q. Did you see any disturbance there? A. No; I was too late for that.

Mr. Taylor — I move to strike out the latter part of the answer, that he was "too late for that."

The Chairman — It may be stricken out.

Redirect-examination by Mr. Kiendl:

Q. Mr. Brackett, there have been some new buildings built near South Bensonhurst, have there not, since the last election? A. Yes, sir.

Q. There are quite a number of new buildings being built there all the time? A. Yes, sir.

Q. It is quite a district for small cottages and homes for people living in New York? A. Yes, sir.

Q. The sixty voters you have mentioned, the increase, this year, there have been quite a number of people who have moved down since that time, are there not? A. Yes, sir; there are some.

Q. Did you figure up the number that have moved into town since last November? A. No, sir.

Q. You have kept no account or track of them whatever, have you? A. No, sir.

Q. You have not made any canvass, such as you made in the November election? A. No, sir.

Q. You have made no canvass whatsoever since the November canvass or December canvass that you made? A. No, sir.

Q. Is it not a fact that the vote in the third district for the year 1894, in the spring election, was less than 500?

Mr. Taylor — I object to it as incompetent and immaterial.

Objection overruled and exception taken by Mr. Taylor.

A. I cannot say positively whether it was less than 500; my impression is that it is.

Recross-examination by Mr. Taylor:

Q. Do you know of a single new house that has been gotten up and occupied since the election in November, 1893, and the spring election, in 1894, this year, in your district? A. Yes, sir.

Q. What is the name of the owner? A. Corrett.

Q. When did he move there? A. He moved there in May.

Q. Then he did not vote at the spring election? A. Yes, that is one case.

Q. I say, then, that he did not vote at the spring election? A. No.

Q. Do you know of one single person that did vote at the spring election, a new house, or new people, that came down there, if you will, who were not qualified in the fall of 1893, and were at the spring election in 1894; do you know, of your own knowledge, of a single case? A. Yes; I know of people who were not qualified to vote before election and were qualified —

Q. Or have come into town between the fall and spring elections? A. Yes, sir.

Q. Who were they? A. Dr. Lippentoe.

Q. When did he move there? A. I cannot tell you the time he moved there; but I am quite positive that he voted at the spring election, and was unable to at the fall election.

Q. Did you see him vote at the spring election? A. I was there when he came to the polls, and he took a paster from me, and he said he would vote it.

Q. But you do not know that he did vote it, of your own knowledge? A. No, sir.

Q. Do you know any other cases? A. I would not swear to them, no; I know of two or three cases that I think are right, but I would not swear to them.

Redirect-examination by Mr. Kiendl:

Q. There were a number of people who moved into town between October first and November that were not entitled to vote at the fall election who might be entitled to vote at the election? A. Well, I should think so.

Q. And those you did not make any particular canvass of, did you? A. No, sir.

Q. Do you know the vote in your district this last spring?

Mr. Taylor — I object to it as immaterial and incompetent.

Objection overruled, and exception taken by Mr. Taylor.

A. I think I did; yes.

Q. What was it? A. I think it was 423.

Q. I mean the spring election, not the fall? A. Two hundred and ninety.

Q. Do you know what the vote was last fall? A. The vote last fall, I think, was 420.

Recross-examination by Mr. Taylor:

Q. Do you know, of your own knowledge, whether all the voters in the district voted at the spring election? A. I should think they did.

Q. Do you know of your own knowledge? A. No, I do not.

The Chairman — The committee will take no more testimony to-day in this case.

Mr. Taylor — I desire to make a demand on the other side, that we be served with specifications and a bill of particulars, upon which they make their demands in regard to illegal voting.

The Chairman — The fact of the demand having been made may be entered by the stenographer upon the minutes.

Mr. Taylor — Will the committee pass upon the question whether we are entitled to a bill of particulars?

The Chairman — The committee will not order any bill of particulars to be furnished.

The committee do not understand that they have the power to make any such requirement as that.

The Chairman — The committee will adjourn the hearing of this case until Tuesday, the twenty-ninth day of May, instant, at 10.30 o'clock in the morning, at the village hall, in the village of New Brighton, Staten Island.

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## PROCEEDINGS.

Village Hall, Town of New Brighton, Staten Island, May 29, 1894 — eleven o'clock A. M.

Present — All the committee; Mr. George Kiendl, for contestants; Mr. James W. Glendinning, for contestees.

Andrew D. Lewin, duly sworn for contestants, testified as follows:

By Mr. Kiendl:

Q. What is your full name? A. Andrew Davis Lewin.

Q. Where do you reside? A. Sailors' Snug Harbor.

Q. How long have you resided there? A. Fifteen years.

Q. You are in what election district? A. I think it is the ninth, sir.

Q. Are you familiar with the people in the Harbor? A. A great many of them.

Q. On November last, November seventh, general election day, 1893, did you vote at that election? A. No, sir.  
That is all.

Cross-examination by Mr. Mullen:

Q. Did you reside in the Harbor, in the ninth district, on the 7th day of November, 1893? A. Yes, sir.

Q. In the institution? A. In the hospital; I am not positive whether I came down on the day before or the day after.

Q. Came down where? A. From the hospital.

Q. The hospital is in the grounds, is it not? A. Yes, sir.

Q. Do you remember whether or not you were in the hospital on election day? A. I do not; no, sir.

Q. Are you prepared to swear that you were in the hospital on election day? A. No, sir.

Q. Do you know where you were on election day? A. I was in either the hospital or down in the main buildings.

Q. Do you know where you were on election day? A. No, sir; I know that I was inside — whether I went to New York, I don't remember.

Q. You do not remember where you were? A. No.

Q. Do you remember anything that you did on election day, any particular thing? A. I will not be positive; but I think I went to New York the day before election.

Q. What month was that? A. November.

Q. Sure of that? A. Yes, sir.

Q. Is it not the fact that it was the day before election that you went to New York — on Monday, not Tuesday, election day? A. I think it was the day —

Q. Do you know whether you did or did not go the day before or the day after? A. Not positively; I have got a very defective memory.

Q. Your memory is very defective, is it? A. Yes, sir.

Q. Got a bad memory? A. On account of my disposition —

Q. Never mind that; you think you have been afflicted with a defective memory? A. Well, more or less at times for twelve years.

Q. There are intervals when you forget what occurred a short time previous, are there not? A. Until I consider of the matter.

Q. And sometimes upon consideration you cannot recall everything that occurred within a short time previous, can you? A. No, sir.

Q. Can you tell the committee here how many times you have voted within the last two years? A. Within two years?

Q. Yes? A. Only once.

Q. You are sure of that, are you? A. Yes.

Q. At what election was that? A. I think in 1892.

Q. You think it was in 1892? A. Yes.

Q. Are you not sure? A. Well, yes, I am sure; I do not know that I should want to swear to it.

Q. What election did you vote at in 1892? A. Presidential election.

Q. Do you remember what month that was held in? A. November.

Q. Do you remember where you went to vote that day in 1892? A. Yes, sir.

Q. Where was it? A. At the ninth district.

Q. Where did they hold their polling place in the ninth district on that day in 1892; what street? A. I don't know the street — it was just beyond the Harbor.

Q. How far beyond the Harbor? A. Near what they call the dike; just across the dike, perhaps two blocks.

Q. Now, is it not a fact that you voted at the February election in 1893? A. I did not, no, sir.

Q. For supervisor or town officers? A. No, sir.

Q. You are positive of that? A. Yes, sir.

Q. And you have no recollection of voting at any time since you voted in the presidential election in 1892? A. No, sir.

Q. Is it not a fact that, owing to your defective memory, you may have voted at some time or place since 1892, and forgotten the fact? A. I do not think so.

Q. You might have forgotten, owing to your defective memory, might you not? A. No, sir; I do not think my memory affects me in that way.

Q. Might you not have forgotten the circumstance that you voted since 1892? A. No, sir; I am quite positive.

Q. And yet it is a fact that your memory at times is very defective, is it not? A. When I have certain spells —

Q. I do not wish to be impertinent, but will you tell the committee what those spells are, and the nature of your complaint is? A. Heart disease is one trouble, and I have had fits of some kind.

Q. Epilepsy? A. I could not tell that; I think not.

Q. And how long do you remain in these conditions of bad memory when they affect you? A. Well, I could not —

Q. Two weeks? A. No, sir.

Q. One day? A. A day; yes, sir.

Q. Sometimes two or three days, is that so? A. On some things; but I can always remember when I consider —

Q. Some things you can remember without consideration; other things require consideration, is that the fact? A. Yes, sir.

Q. You have not told the committee a single thing that you did on election day, in November last — never mind, that will do.

Redirect-examination by Mr. Kiendl:

Q. You have a very distinct recollection, have you not, that you did not vote at the last election, held in November, 1893?

Mr. Mullen — I object; it is leading.

The Chairman — The witness may answer the question.

Mr. Mullen — Exception.

A. I have a distinct recollection that I did not vote.

Augustus S. White, duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. White, where do you reside? A. Sailors' Snug Harbor.

Q. How long have you resided there? A. Nine years.

Q. In what election district? A. In the eighth.

Q. In the eighth? A. Yes, sir.

Q. You have resided in that district how many years? A. I have been there nine years.

Q. You were a resident of that district in last October and November, 1893? A. I was; yes, sir.

Q. Did you vote at the last general election, November 7, 1893? A. I did, sir.

That is all, Mr. White.

Mr. Mullen — That is all.

Alexander M. Smith, duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. What is your full name, Mr. Smith? A. Alexander M. Smith.

Q. Where do you reside? A. Sailors' Snug Harbor.

Q. How long have you resided there? A. Four years and four months.



Q. Were you a resident of Sailors' Snug Harbor in October and November, 1893? A. '93, I was.

Q. Did you vote at the last general election, November, '93? A. I did not.

Cross-examination by Mr. Mullen:

Q. Where were you on election day? A. I was in the Harbor.

Q. What part of the Harbor? A. The east room.

Q. All day? A. Off and on; yes, sir.

Q. Did you not go out of the Harbor during the day? A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Have you been talking to any one about coming here to testify? A. Not a soul.

Q. Any one spoken to you about it? A. No, sir.

Q. How old are you? A. Sixty-four, last January.

Q. Are there any other persons of your name, Smith, in that Harbor? A. Not that I know of.

Q. Will you swear that there is not another person named Smith? A. Plenty named Smith, but not my name.

Q. How many named Smith were residents of the Harbor in November, 1893? A. I have no idea.

Q. Can you give us the names of one or two of them? A. Not the first name.

Q. Do you know the number of Smiths in the Harbor at that time? A. Could not possibly.

Q. Were there three? A. I think there might be three.

Q. Don't you think there may be five? A. May be more.

Q. May be from three to six? A. Three to twenty; I don't know anything about it.

Q. You don't know the first names of either or any of those Smiths? A. Not one.

Charles Hendrickson, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Where do you reside? A. In the Harbor.

Q. How long have you resided in the Harbor? A. Ten years.

Q. Were you a resident of the Harbor in November, 1893, November seventh? A. Yes, sir.

Q. In what election district did you reside? A. The ninth.

Q. Did you vote on election day, November 7, 1893? A. I did not.

Cross-examination by Mr. Mullen:

Q. You say that you believe you did not vote? A. I know I did not vote, because I did not register; didn't go near the polls.

Q. What do you mean by saying you believe you did not vote? A. I did not say I did not believe it; I did not vote.

Q. Didn't you say you believed you did not? A. I did not register; didn't go near the polls.

Q. Didn't you know your name might have been put upon the roll? A. They might have put a half dozen names; I didn't know about it.

Q. Don't you know, Mr. Witness, that your name might have been put upon the roll without your name appearing there at all? A. Yes, sir.

Q. Might have been done lawfully when they sat as a board of registration? A. If I understand right, they carry names over from one year to another.

Q. Carry names over? A. Yes, sir.

Q. And your name might have been on the poll-lists? A. Yes.

Q. How old are you? A. Seventy years old.

Q. Can you tell us what year you were born in? A. I cannot recollect now what year I was born in.

Q. What month were you born in? A. July; July 14.

Q. Do not know the year? A. Do not recollect it now.

Q. Have you a good memory? A. Pretty good.

Q. But at times it is not as good as it is at other times? A. I remember most everything that occurs.

Q. How many times have you voted in the last two years?

A. Last time I voted was when the polls were held in front —

Q. How many times have you voted in the last two years? A. Nary once.

Q. Nary once? A. No, sir.

Q. Then you have not voted in two years? A. I have not.

Q. You are a citizen? A. I am an American citizen.

Q. Have you voted in three years last past? A. I do not know what year it was, but the last time I voted the polls were held at the front gate.

Q. What election did they have then? A. That I do not know.

Q. Don't you know whether it was the presidential election or the village election? A. Local election I never voted.

Q. Will you be kind enough to tell me whether it was a presidential election, State election or village election that you last voted at? A. It was a presidential election.

Q. And what year was that held in? A. I do not recollect the year.

Q. You do not recollect the year? A. No, sir.

Q. Can you tell what month it was held? A. It was in November.

Q. What day of the month? A. Generally the Tuesday after the first Monday.

Q. Now, who has been talking to you about coming here as a witness before you came here to-day? A. Nobody.

Q. Not at any time? A. No.

Q. How did you happen to come here? A. Because I got a subpoena.

Q. You mean to say that you have not spoken to any one about coming here as a witness? A. After I got a subpoena to come I did.

Q. To whom did you speak? A. Two or three in the shop; I spoke to them about coming here after having been subpoenaed.

Q. And who else? A. Nobody else.

Q. Did you speak to any one in charge of the Harbor, any of the officers? A. No, sir.

Q. None of the clerks? A. No, sir.

Q. When were you subpoenaed? A. Recently.

Q. When? A. Yesterday.

Q. What is your name, please, in full? A. Charles Hendrickson.

Q. How do you spell Hendrickson? A. H-e-n-d-r-i-c-k-s-o-n.

Q. What election district do you say you reside in? A. They call it the ninth.

Q. Any other person by the name of Hendrickson in the Harbor? A. Two or three others.

Q. What are their first names? A. I do not know.

Q. You do not know their first names? A. No.

Q. You are not prepared to swear that they are not Charles Hendrickson? A. Never heard them call their names.

Q. Of your own knowledge? A. They are not named Charles.

Q. How do you know? A. Because I have heard them called other names.

Q. What are their names? A. That I cannot tell you now.

Q. You cannot tell their names, yet you swear their names are not Charles? A. I have heard them called other names.

Q. Do not they frequently call men by nick-names in the Harbor? A. I have heard the officers call their other names.

Q. Do not the inmates call their names by nick-names, not their proper names? A. Great many, yes.

Q. A very frequent thing there, is it not? A. Very frequent.

Q. You are not prepared to swear that some other man named Hendrickson, in the Harbor, from the ninth district, did not vote at the polls on election day? A. No, sir.

Mr. Kiendl — Mr. Lewin wishes to make a statement.

Mr. Lewin — I wish to ask whether I understood the question correctly, whether I voted in the last election, in November.

The Chairman — A question of that kind was asked you and in answer you said you did not vote.

Mr. Lewin — That is correct — I voted at the presidential election the year before.

Mr. Mullen — Who told you that, since you came from inside there? Mr. Kiendl called you, and told you, did he not? This gentleman here told you to say that, did he not? A. No, sir.

Q. Who did? A. I thought of it as I was going down the street.

Q. Who spoke to you about it? A. No one.

Q. Are you sure of that? A. Yes, sir.

Q. Who did you ask; did you ask Mr. Kiendl? A. I asked him if I could re-testify; modify my testimony, as I understood that the testimony or question was, did I vote at the last presidential election, or did I vote this last November. I voted for the presidential election, but not last November.

Q. What did Mr. Kiendl tell you? A. He said that he understood me to say that I voted at the last presidential election, but did not vote at the last election.

Q. You did say that, that you voted at the last presidential election? A. That is why I came back.

Q. And you afterward said that you did not vote at the presidential election? A. I didn't mean to say that; I voted at the last presidential election.

Mr. Kiendl — I do not think it is proper to carry this any further.

The Chairman — The witness has made clear his statement, and the stenographer has got it.

The Witness — I thought of it, whether I made a mistake or not, and did not wish to go away without rectifying it.

The Chairman — I guess the stenographer has got it all right. The committee will remember what you testified to, even if the stenographer does not get it straight.

Thomas Brown, duly sworn for the contestants, and testified as follows:

By Mr. Kiendl:

Q. Mr. Brown, where do you reside? A. In Leigh, Scotland.

Q. Where do you live now? A. Sailors' Snug Harbor.

Q. How long have you lived there? A. Six years.

Q. In what election district is that? A. I do not know.

Q. In what building are you in? A. In the building H.

Q. And you have lived there, you say, going on six years? A. Yes, sir.

Q. And you were there on the 7th of November, 1893? A. Yes, sir.

Q. Did you vote at the last election? A. No, sir.

Mr. Mullen — I object to this question, because there have been two elections since 1893.

Q. Did you vote at the election held November 7, 1893? A. No, sir.

Cross-examination by Mr. Mullen:

Q. Did you hear what the gentleman here said to you? A. Yes, sir.

Q. Did you understand what he said? A. Yes, sir.

Q. How old are you? A. I am seventy-two; nearly seventy-three.

Q. What year were you born in? A. Eighteen hundred and twenty-one; 14th September, 1821.

Q. You are an American citizen? A. Yes, sir.

Q. What is your name? A. Thomas Brown.

Q. Is there any one else named Thomas Brown in the Harbor? A. I do not know.

Q. Will you swear that there is not a Thomas Brown in the same place that you are in? A. There is none in the room.

Q. I mean in the Harbor, and in that election district? A. I do not know.

Q. How many times have you voted in the last two years? A. None.

Q. In three years? A. Once in three years.

Q. When was that? A. I cannot tell you; in the fall of the year, three years ago.

Q. What year was it? A. It's so long ago, I don't recollect.

Q. What election was it? A. Election for president.

Q. Where were you on the seventh day of November last? A. Last November?

Q. Yes? A. In the Home.

Q. Did you go out during the day? A. Not outside the gate.

Q. You are sure of that? A. I am sure of that.

Q. What makes you sure of that? A. Because I was not well, and stopped inside.

Q. You usually go out every day when you are well? A. I go out when I want to go.

Q. You are positive that you did not go out on the seventh day of November last? A. I am positive.

Q. Who has been talking to you about coming here as a witness? A. None, to my knowledge.

Q. If any one had, you would know of the fact, would you not? A. Yes, sir.

Q. You say that no one has spoken to you about coming here to-day? A. Yes, sir.

Q. How many Browns are in the Harbor, in the Home? A. I do not know.

Q. Do you know any one named Brown besides yourself? A. Yes; one on the same floor with me; I think his name is George; I am not positive.

Q. Can you swear that his name is George? A. No, sir.

Q. And your name is Thomas? A. Yes, sir.

Q. You will not swear that his name is not Thomas, will you? A. No, sir.

Q. Is it not a fact that there are ten men named Brown in the Harbor? A. I do not know.

Q. Do you know more than one besides yourself? A. No, sir.

Q. Positive of that? A. One; yes, two; there are two there; I know two.

Q. You won't swear that there are ten of the name of Brown, will you; that there is not ten of that name? A. No, sir.

Henry C. Burch, duly sworn for contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Burch, your full name is Henry C. Burch? A. Yes, sir.

Q. Where do you reside, Mr. Burch? A. Sailors' Snug Harbor.

Q. How long have you resided in the Harbor? A. Since February, 1882.

Q. You were a resident of the Harbor on November 7, 1893? A. Yes, sir.

Q. In what district? A. I have been in building H; I think it is the ninth district.

Q. Did you vote at the last election held November 7, 1893?  
A. No, sir.

Cross-examination by Mr. Mullen:

Q. Your name is Charles C. Burch? A. No, sir.

Q. What is it? A. Henry C. Burch.

Q. What building do you reside in? A. Building H; sometimes called the southwest building.

Q. You are an American citizen? A. Yes, sir.

Q. Do you know of any person named Burch in the Harbor besides yourself? A. No, sir.

Q. Are you acquainted with every man in the Harbor? A. With every man?

Q. Yes, sir? A. No, sir.

Q. And you are not prepared to swear that there is not another man named Burch in the Harbor? A. I could not do that.

Q. Have you voted at all since you have been in the Harbor?  
A. Yes, sir.

Q. When? A. Last presidential election.

Q. Eighteen hundred and ninety-two? A. Yes.

Q. You came to the Harbor in February, 1892? A. Eighteen hundred and eighty-two.

Q. What election have you voted at since the presidential election? A. None.

Q. Sure of that? A. None that I can remember; I cannot swear; I am almost sure I have not.

Q. Mr. Burch, when you say you cannot remember — A. I cannot say positively; I cannot swear to it.

Q. I was going to ask you if you have a good memory? A. In political matters there in the Harbor I have taken so little interest in it that I cannot say that it is thoroughly good.

Q. You cannot say that your memory is thoroughly good on politics? A. Some things I recollect very well.

Q. And yet some things political, by way of an election, may have happened which you have forgotten? A. So they may, yes.

Q. And you may have voted at some election which you have forgotten? A. Yes, sir; but not since the presidential election.

Q. You swear positively that you have not voted at any election since the presidential election? A. None that I remember.

Q. Will you swear positively that you have not voted? A. No, I will not.

Redirect-examination by Mr. Kiendl:

Q. Are you positive that you did not vote at the last election held in November, 1893?

Mr. Mullen — I object.

Mr. Crosby — Have you been sworn as a witness regarding the election held in November, 1893? A. Yes, sir.

Q. In what place? A. In Brooklyn.

Q. In court? A. Yes, sir.

Q. When was your attention first called to the fact that there was a controversy in regard to the election held in November, 1893?

A. About that time — two days previous to that.

Mr. Mullen — Who has been speaking to you about this case, before you came here? A. I do not believe anybody has been talking to me. I have talked to several; I said I did not care to come, and was sorry I was called again; I could not give any information I thought would be of any good.

Q. Who spoke to you before you went to court in the legislative contest? Before you went as a witness? A. The person who summoned me.

Q. Any one else in the Harbor? A. None that I remember.

Q. Will you swear that none of the officers in the Harbor spoke to you about it? A. No, sir; I would not do that, because I had trouble with one of the officials about the time I went out, and it was about election; and I had trouble with him.

Q. That is before you went as a witness over to Brooklyn? A. Immediately before, as I was on my way out the front door.

Q. Did he tell you anything about where you were going to testify? A. No, sir; I knew that by my summons.

Joseph Brooks, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Brooks, where do you reside? A. Sailors' Snug Harbor.

Q. How long have you resided in the Harbor? A. Nearly eight years, within a few days.

Q. Were you a resident of the Harbor in November, 1893? A. Yes.

Q. In what election district did you reside? A. I was in the ninth.

Q. Did you vote at the last general election? A. No, sir.



Q. Held November 7, 1893? A. Yes, sir; November 7, 1893; I was not on the Island that day, and did not vote.

Cross-examination by Mr. Mullen:

Q. You say your name is Joseph Brooks? A. Yes, sir.

Q. Do you know any one else by the name of Brooks in the Harbor? A. There is another man there by the name of Brooks.

Q. Is he the only other person of the name there besides yourself? A. The only one that I know of.

Q. Do you know every man in the Harbor? A. No, sir; not by a great many.

Q. Do you know the first name of this other Mr. Brooks? A. His first name is — no, I could not say.

Q. Now, has any one spoken to you about coming here as a witness? A. No, sir.

Q. You testified before Judge Cullen in Brooklyn, in the matter? A. Yes, sir; I did.

Q. Who spoke to you about going over there? A. No one spoke to me about going there.

Q. You were subpoenaed and went over? A. I was subpoenaed and went over.

Q. You know of only one other man named Brooks in the Harbor? A. The only one I know of.

Q. He is in the ninth district? A. In the eighth, I think; he lives over on the east side.

Q. Did he live on the east side in November last? A. I am not positive.

Q. He might have lived in the ninth? A. He might have lived in the ninth at that time, not knowing where he is located exactly in this building.

Charles Brown, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Brown, where do you reside? A. Sailors' Snug Harbor.

Q. How long have you resided in the Harbor? A. Three years and seven months, nearly, within a day; or three years last October.

Q. In what election district do you reside? A. I stop in the east building there.

Q. Is it known by a letter? A. It is the last building on the first row, this side, called the east building.

Q. You do not know what election district that is in, do you? A. I do not know anything about the election.

Q. Were you in the Harbor on November 7, 1893? A. Yes, sir.

Q. Did you vote on November 7, 1893? A. No, sir.

Cross-examination by Mr. Glendinning:

Q. You say your name is Charles Brown? A. Yes, sir.

Q. How many other persons are in the Harbor by the name of Brown that you know? A. I know three by the name of Brown.

Q. Do you know the first names? A. I could not tell you.

Q. You know three besides yourself named Brown? A. Yes; but for all I know there might be a dozen.

Q. Do those three live in the same building with you? A. No; I do not know where they live; not in the same building.

Q. You do not know every man in the Harbor, do you? A. No, sir.

Q. How many do you know, comparatively speaking? A. I could not tell; I have not been there very long; I know them all by sight, and that is all.

Q. You cannot tell how many there are in the Harbor named Brown, nor can you tell whether there is another man named Charles Brown, can you? A. No; not Charles.

Q. You do not know whether their names are Charles or not? A. No, sir.

Thomas Cufflin, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Cufflin, where do you reside? A. Sailors' Snug Harbor.

Q. How long have you been a resident of the Harbor? A. Thirteen years.

Q. In what election district? A. Ninth of Castleton.

Q. Is the east building in the ninth district? A. No, sir; the eighth.

Q. That is the one that Mr. Brown resides in? A. Yes, he is in the eighth election district.

Q. Is there any other person by the name of Cufflin that you know of? A. No, sir.

Q. Did you vote at the last general election, held November 7, 1893? A. I did not.

Cross-examination by Mr. Glendinning:

Q. Are you prepared to swear that there is no other man of your name in the Harbor? A. I am.

Q. Do you know every one that lives in the Harbor? A. No; of course not.

Q. How many inmates are there? A. Perhaps 850.

Q. How many do you know of the 850? A. The majority of them; know them by sight, of course.

Q. How many do you know by name? A. Not many.

Q. Do you know fifty by name? A. I might, probably, know fifty by name.

Q. You do not know a hundred by name? A. Probably I might.

Q. Well, do you? A. Yes; if I was in humor to enumerate, probably I could; but not their given names.

Q. How many do you think you could mention by their surnames? A. Probably half a dozen; those people I know intimately, of course.

Q. Out of that 850 you think that if you tried you might mention 100 of their names; is that the fact? A. Yes; their given names.

Q. Any more than that, could you? A. No; I don't think so.

Q. How often have you voted in the last three years? A. In the last three years?

Q. Yes? A. Once, I think; I could not swear whether I voted once or twice; that is a fact, I could not; I might have voted three times in the last three years.

Mr. Crosby — Have you been sworn as a witness before in regard to the election held last November? A. Yes, sir.

Q. You were sworn before the Senate committee? A. Yes, sir.

Q. You have testified positively that you did not vote at the last election? A. Yes; I know I did not vote.

Q. Do you remember where you were that day? A. Yes; I was in the Harbor.

Q. And when was your attention first called to the fact that you were registered as having voted? A. I told the registration clerks there; they have carried my name right along.

Q. When was your attention called to the fact that the poll-list showed you had voted on the last general election? A. I do not know; I do not know that it does.

Q. When do you remember voting the last time prior to the first of January last? A. I can positively remember voting for Mr. Cleveland; that, I think, was two years ago, probably.

Q. Have you voted since that time? A. I forget whether I voted at the June election or not, for the trustees of the village.

Q. At the village election? A. Yes, sir; trustees' election; I do not remember whether I did or not.

Q. How do you know you did not vote last November at the

general election? A. Because I was not out of the institution; I did not propose to go with a keeper, and so I did not go.

Mr. Crosby — What do you mean by that — did not propose to go out with the keeper; was there any requirement of that sort at the last general election? A. No; not at that election any more than at any other election.

Mr. Mullen — We do not want to place this man in an awkward position.

Mr. Crosby — That is, you were not permitted to go voluntarily alone to vote? A. Yes; that is the proper question and that is the answer.

Q. And you know that that was the state of affairs at the last general election held in November, that you were expected to go with some one to vote, and you know that you did not go because you declined to go with some one to supervise you? A. I would not go with the keeper; I would not go with a convoy.

Q. And that is the reason you know you did not vote at that election? A. Yes, sir.

Q. You have town meetings in the town of Castleton? A. Yes, sir.

Q. And corporation elections in the village of New Brighton? A. Yes, sir.

Q. Are you required to go with a keeper, or with some one, to the town and village elections? A. No, sir.

Q. That is peculiar to the State election — to the general election? A. No; no election at all, whether it is the village or State election, or whether it is any election at all, where you are privileged to vote.

Q. The question I was seeking to procure an answer to was whether there is any difference, any different rule at the State elections than at the village or town elections? A. No, sir; no different rule at all.

Q. That is, you are expected to have some one accompany you when you go to vote? A. That is just as it is chosen to make it; I have known when you could go without anybody with you at all.

Q. This question squarely — do you know that at the last general election in November, you were expected to have some one accompany you to the polls? A. If I went out to vote.

Q. That was a fact brought to your knowledge? A. Yes, sir.

Q. And you declined to go for that reason? A. Yes, sir.

Mr. Mullen — Have you got a good memory? A. Pretty fair, under all circumstances; I think I have a pretty good memory.

Q. And you say you were not outside the Harbor on the seventh day of November? A. No, sir.

Q. Do you remember what the election was that was held that day? A. Yes, I do.

Q. What was it? A. State election.

Q. And you remember the circumstances of that day very well? A. Yes, sir.

Q. Did any one come to you in the Harbor and ask you to go out and vote with them? A. Yes, two or three.

Q. Inmates of the Harbor? A. Yes, sir; workers.

Mr. Crosby — Is this rule that you state peculiar to yourself or was it a general rule, as to all the inmates? A. I was under what they call "taboo" at the time.

Mr. Glendinning — What were you tabooed for? A. I was reported at the gate, coming in intoxicated; I had twelve witnesses against his, but I was judged guilty, and given two months; that was on the twentieth of September, and I did not come off the taboo until the twentieth of November.

Q. And while you were on the taboo they would not allow you to go out alone? A. No man was allowed to go out under taboo without permission.

Q. And accompanied by some one? A. Yes, sir.

Q. But if you were not under taboo, they allowed you to go out? A. Allowed you to do as you pleased.

Henry C. Burch desired to make a statement in correction of his testimony, and took the stand and said: It was as to the time I came in the Harbor. I think I gave it as 1882. It was not 1882, it was 1884. It was in 1882 I lost my leg. I came to the Harbor, February, 1884.

Thomas Davis, sworn for contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Davis, where do you reside? A. I reside in Sailors' Snug Harbor, since 1854, sir.

Q. And what election district do you reside in? A. I was in the ninth district at the foremost, before there was ever a district in the county of Richmond.

Q. And you are in that district still? A. I am, sir, at the present time; but, however, the ninth district is converted into the eighth; there is only one district of the Sailors' Snug Harbor.

Q. November 7, 1893 — what district were you in then? A. I was in the ninth, sir.

Q. Did you vote at the last general election, held November 7, 1893? A. I did not, sir.

Mr. Glendinning — Mr. Davis, how many persons of your name are residents of the Harbor? A. I do not know; there is no man by my name; that is, Thomas Davis —

Q. No; I am speaking of Davis; how many Davises? A. There may be Davises there, but no Thomas.

Q. How many Davises are there? A. I do not know, sir.

Q. Do you know any more than yourself? A. I do not; I know Tom Davis, and that's myself, with a wooden leg.

Q. That is what is left of you? A. That's what's left of me.

Q. Do you know any other persons named Davis? A. John Davis, but not Thomas Davis.

Q. You know Thomas Davis? A. Yes; that's me.

Q. With the wooden leg? A. With the wooden leg.

Q. Do you know John Davis? A. I do not know John Davis; only the name I hear.

Q. Do you know any other Davis? A. I do not.

Q. How many people are there in the Harbor? A. Well, that is a question; I do not know that I could rightly answer you, but I think there is eight or nine hundred people; but the information you want to derive from me, will you please consult the governor's books, and you will find out who is there; I cannot inform you.

Q. Now are you prepared to swear, of your own knowledge, that there is no other person residing within the Harbor of the name of Thomas Davis other than yourself? A. That would be a question, sir, that no man could answer, because I do not know the people in that institution. I have been there since 1854, with the exception — well, now can I swear to the names of the men who come in to-day and to-morrow? I know my own name and I attend to my own business —

Q. Where were you on the seventh day of November? A. Where was I? I was under taboo, inside the institution; could not get out, sir.

Q. You could get out if some one accompanied you? A. I could if I wanted to make myself a blackguard and associate with those —

Q. How many times have you been under taboo during the last two years? A. About 150.

Q. You are under it now? A. I am.

Peter Early, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Where do you reside? A. Sailors' Snug Harbor.

Q. How long have you been a resident of the Harbor? A. Ever since 1887.

Q. And you were a resident of the Harbor on November 7, 1893?  
A. I was, sir.

Q. In what election district are you a resident? A. In the ninth.

Q. Did you vote at the last general election, November 7, 1893?  
A. I did not, sir.

Mr. Glendinning — Are there any other persons named Early in the Harbor? A. There are.

Q. How many? A. There is only one I know of; I have a cousin John Early.

Q. There are eight or nine hundred people there? A. I do not know whether there are any more there or not.

Q. You do not know whether there are any others than your cousin and yourself by the name of Early? A. No, sir.

Q. There may be? A. He is a cousin of mine.

Q. There may be more than you two without you knowing it?  
A. Yes, sir.

Q. What is your first name? A. Peter.

Q. There may be some other Peter Early that you do not know, may there not? A. That is so.

Q. Were you under taboo on election day, November 7, 1893?  
A. No, sir; I was down on the dock catching tom-cods all the whole day.

Q. What time did you go out in the morning? A. I went out about eight o'clock, I guess.

Q. You knew where the polls were? A. I did.

Q. Did you go over to the polls that day? A. I did not.

Q. Are you sure you did not? A. I could swear to it, pop.

Q. Are you positive Peter? A. That's so.

Q. What time did you come out of the Harbor to-day Peter?  
A. I came out about half-past eight.

Q. Have not been back since, have you? A. I have not.

Q. Have you been examined as a witness in any proceedings before? A. Yes, I was over in Brooklyn.

Q. Before Judge Cullen? A. Yes, sir.

Q. Did any one speak to you about what you were to testify to when you went before Judge Cullen? A. They did not, sir.

Q. None of the officers? A. No, sir; not one of them.

Q. No one else, none of the inmates? A. No, sir.

Q. Did you vote last fall? A. I did not register, or anything; I have not voted since the last presidential election.

Q. How many times have you voted in the last three years, any election? A. The last time I voted was the presidential election.

Q. When did you vote before that? A. Well, I voted for — it is very seldom I vote here.

Q. Peter, didn't you vote for trustee, last June, a year ago? A. I did not, sir.

Q. You are sure of that? A. I will swear to it.

Q. Never voted for supervisor of this town last two years? A. No, sir.

Q. Sure of that, also? A. Yes, sir.

George Foster, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Foster, what is your full name? A. George Foster.

Q. Where do you reside? A. In Sailors' Snug Harbor.

Q. In what election district do you reside in the Harbor? A. Ninth.

Q. How long have you resided in the Harbor? A. Eleven years — since 1883.

Q. Did you reside in the Harbor November 7, 1893? A. Yes, sir.

Q. Did you vote at the last general election, held November 7, 1893? A. I did not, sir.

Mr. Glendinning — Mr. Foster, do you know how many inmates there are in that institution? A. I could not tell you.

Q. You do not know whether there are any other Fosters besides you there? A. I say there is one.

Q. Do you know whether there is any more? A. No, sir.

Q. If there is, would you know it? A. I do not know, sir.

Q. How many men do you know personally in that institution? A. I could not tell you; very few; I know them mostly by sight.

Q. How many George Fosters do you know that are in that institution? A. None but myself.

Q. There might be other George Fosters there, might there not? A. There might be.

Q. Where were you on election day? A. I was inside the Harbor; I was not outside the gate.



Q. Any part of the day? A. No.

Q. How old are you? A. I am going on for sixty-eight.  
That is all.

John Greene, being duly sworn for the contestants, testified as follows:

Q. Mr. Greene, where do you reside or live? A. Sailors' Snug Harbor.

Q. How long have you lived in the Harbor? A. Four years and five months.

Q. Were you in the Harbor on November 7, 1893? A. Yes, sir.

Q. In what election district do you reside? A. I have not voted at all since I have been in the Harbor.

Q. What election district are you in — eighth or ninth? A. I do not know what you mean.

Q. What building are you in, Mr. Greene? A. C.

Q. You do not know what election district that building is in, do you? A. No.

Q. Did you vote at the last general election, held November 7, 1893? A. No, sir.

Cross-examination by Mr. Glendinning:

Q. How long do you say you have been there, Mr. Greene?  
A. Four years and five months.

Q. Do you know how many men are in that institution? A. No; I do not, sir.

Q. Do you know how many John Greenes are in there? A. I know there is one; that is all I know; one John Greene more.

Q. You are personally acquainted with him, are you? A. No.

Q. Do you know whether there are any other John Greenes there? A. I do not know, sir.

Q. You say that you never voted at any election since you have been in the institution? A. Not since I come in the institution.

Redirect-examination by Mr. Kiendl:

Q. Do you know the Christian name of this Greene that you have spoken of besides yourself? A. Only John Greene that I know of.

Q. Do you know him personally? A. He lives in the same building as I do.

Q. You think his Christian name is what? A. John Greene.

Jefferson A. Hall, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Hall, where do you reside? A. Sailors' Snug Harbor.

Q. How long have you resided in the Harbor? A. About twelve years.

Q. In what election district do you reside? A. Eighth district, I believe.

Q. Were you in the Harbor on November 7, 1893? A. Yes, sir.

Q. Did you vote at the last general election, held November 7, 1893? A. No, sir; I did not.

Q. Can you tell me what election district building C is in? A. No, sir; I do not know much about the district; I am in district 8, they call it, nearest one this way.

Q. Do you know what district building C is in? A. No, sir.

Cross-examination by Mr. Glendinning:

Q. How many inmates are you acquainted with? A. I could not tell exactly the number; probably I might know twenty-five; I do not think any more than that.

Q. Do you know them by name? A. Some of them I do, by name.

Q. By the first name? A. Yes, I know some of them by the first name.

Q. Do you know any other man named Hall? A. I believe I am the only one in the institution.

Q. You say you only know twenty-five of the number in the institution? A. Twenty-five or thirty.

Q. How many men in the institution? A. Said to be 850.

Q. You mean to say you think you are the only Hall in that institution? A. Only one I have heard of.

Q. Notwithstanding, you only know twenty-five out of 850? A. All I know personally.

Q. Is it not a fact that there may be other Halls than you? A. I could not say positively.

Q. Also, Jefferson A. Hall? A. No one by that name.

Q. You do not know as a fact? A. I could not swear to it.

Q. You say there are over 800 men in that institution? A. I could not swear there is not; I never heard his name in our, or in any other hall.

Q. Simply because you never heard Jefferson A. Hall mentioned outside of your own name, you believe there is no Jefferson A. Hall? A. I do not think there is.

William H. Hutson, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Hutson, where do you reside? A. Sailors' Snug Harbor.

Q. How long have you been a resident of the Harbor? A. Fifteen years, last April eighth.

Q. What election district do you reside in? A. The eighth.

Q. Were you in the Harbor on November 7, 1893, last? A. I was, sir.

Q. Did you vote at the last general election, held November 7, 1893? A. Most emphatically, no, sir.

Q. Can you tell me, Mr. Hutson, what election district building C is in? A. A, B, C, I could not say positively whether it is in the eighth or ninth.

The Chairman — I think it is all in the evidence as to which district these different buildings belong.

Cross-examination by Mr. Glendinning:

Q. Where were you on election day? A. I was in my room, in the Harbor, except to go down to my meals.

Q. How long have you been an inmate there? A. Fifteen years, the eighth of last April.

Q. How many men are in that institution? A. I think 855; anyhow, above 850.

Q. How many out of that 855 are you acquainted with personally? A. Perhaps not two dozen.

Q. Those two dozen, do you know their names? A. No, sir; only their faces.

Q. So that you would not know if there was another Hutson in the institution? A. I would know if such a person was there; it is a natural thing for a person to know if he has a name-sake.

Q. Do you know that there is no Hutson in that institution besides yourself? A. Not at present; there was one a few years ago, but he passed away.

Q. You say you only know twenty-five out of 800; how do you know among the balance there is not a Hutson? A. It is very apt to be.

Q. Do you know it to be a fact? A. I could not say definitely; no, sir.

Q. Did you ever vote prior to the last election? A. Yes.

Q. In which election? A. I voted in the presidential election.

Q. Not since then? A. Yes, one municipal election; only once.

Q. When was that? A. That was about two years ago, I think.

Q. You think — we want to know? A. I could not say definitely the date.

Q. You cannot say whether it is a year ago or two years ago? A. My memory is not as retentive as it was formerly; I voted only once since the presidential election; but most emphatically did not vote in the election of November last.

Q. You say your memory is defective? A. It is becoming so; yes, with my age.

Q. How long has it been becoming so? A. Last two or three years.

Q. So that you do things you do not remember afterwards? A. Not as clearly as I used to.

Q. Do you remember who were the candidates for president, at the last presidential election? A. That would be a very positive, almost —

Q. I want to test your recollection now? A. That would be all right — with all respect to you — I am ashamed to have you ask me a question of that kind.

Q. Answer the question. A. Mr. Cleveland.

Q. And who was the candidate against him? A. Mr. Harrison.

Q. That is all right. A. Oh, yes; I am positive.

Q. Who did you vote for at the last town election that you speak of.

Mr. Kiendl — I object to that — I do not see how it is material.

Mr. Glendinning — If the committee please, here is a gentleman who states that his memory is defective.

The Chairman — I do not think it is necessary to go into a long examination to establish a proposition, which the witness himself distinctly admits. Why not let it stand on that statement.

William B. Melvin, duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Your full name is William B. Melvin? A. Yes, sir.

Q. Where do you reside? A. Sailors' Snug Harbor.

Q. How long have you resided in the Harbor? A. Three years, eight months and three days.

Q. You were a resident of the Harbor on November 7, 1893, were you? A. Yes, sir.

Q. What election district are you in? A. Well, I am in the west building.

Q. Do you know what election district that is in; number eight or nine? A. My number of the house, you mean?

Q. What election district? A. No; I cannot answer that.

Q. You are in the west building? A. I am in the west building.

Q. What letter is that building? A. "A."

Q. Did you vote at the last general election, held November 7, 1893? A. No, sir.

That is all, sir.

Cross-examination by Mr. Glendinning:

Q. What is your age? A. I am seventy next September.

Q. And are you acquainted with many inmates in the institution?  
A. Oh, well, yes.

Q. About how many? A. I cannot tell that.

Q. Approximate how many? A. I do not care to say —

Q. Ten? A. Yes.

Q. Twenty? A. Yes, I know twenty.

Q. Acquainted with fifty? A. Perhaps I may be.

Q. Are you acquainted with as many as a hundred? A. I cannot say to that.

Q. Do you know how many men are in the institution? A No, sir.

Q. Have you any idea how many are in there? A. Eight or nine hundred, I suppose.

Q. Eight or nine hundred, is it? A. I suppose.

Q. And out of that eight or nine hundred you think you know fifty or sixty? A. Yes, sir.

Q. How many do you know by name? A. Not one-half of them.

Q. How many do you know by name? A. I might know twenty or thirty, probably.

Q. Do you know any other Melvins in the institution? A. I do not.

Q. There might be other Melvins there? A. There might be other Melvins there, but I do not know them.

Q. There may be other William B. Melvins besides you in the institution, and you would not know it? A. There may be; I have never heard of a Melvin in the institution since I have been there but myself.

Q. But, notwithstanding that, there might be other Melvins there? A. Yes, sir.

Oliff Normen, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Normen, where do you reside? A. Snug Harbor, sir.

Q. How long have you resided in the Snug Harbor? A. I have resided in Snug Harbor since the ninth of last March; a year ago the ninth of last March.

Q. Were you in the Harbor November 7, 1893? A. Yes, sir.

Q. What election district are you in? A. I believe I belong to house E, and believe it is in the ninth district; I think so; I am not much acquainted with these affairs, but I hear what people say.

Q. Did you vote at the last general election, held November 7, 1893? A. No, sir; not to my knowledge; not that I am aware of; I was here the day before election; I went up there to the place where they register, and when I came up there — it was a man with me; me and another man — and I see he pulled out his papers; I said it's no use for me to register; I got no papers and cannot vote, although I have fought for this country as a soldier; I went out in '64, in the Sixty-ninth volunteers.

Q. That was the day before election? A. Yes, sir.

Q. Did you vote on election day? A. No, sir; not that I am aware of — I was not here.

Cross-examination by Mr. Glendinning:

Q. You say you have been in the institution how long? A. I was in the institution a year the ninth of last March.

Q. How many people in the institution are you acquainted with? A. Well, it may be three or four, or a half dozen.

Q. Do you know them by name? A. Well, I know John Kenny, and I know Sam Reddin and Hollowood.

Q. That is all you know by name? A. Yes, sir.

Q. Do you know about how many people are in the institution? A. Well, sir, I hear them say that it is close on to nine hundred.

Q. Do you know of any other Normens than yourself? A. There is another Normen there; I believe he is a baker.

Q. Do you know his first name? A. He spells his name J. Normen, I believe.

Q. There may be other names, and you would not know them? A. Yes.

Q. By the name of Oliff? A. Yes.

Q. You say you do not know whether you voted or not? A. I could not say, sir; I was not here, sir; I was not here in Staten Island that day, election day.

Mr. Crosby — Did you say you were not a citizen of the United States? A. I have no papers.

Q. Where were you born? A. Norway.

Q. How old were you when you came to this country? A. I came here in 1863.

Q. How old were you then? A. I was then going on twenty or twenty-one; between twenty and twenty-one.

Q. Never been naturalized? A. No, sir; I have never been naturalized, although I served in the time of the war.

By Mr. Glendinning:

Q. You say you were not here on election day? A. Not here on the Island, sir; I left here about nine o'clock in the morning.

Q. Did you not state in your direct testimony that if you voted you did not know it? A. I did not know it.

Q. If you did vote you did not know it? A. I could not tell.

Q. And if you voted at all, it was before you left the Island at nine o'clock in the morning? A. Yes, sir.

Q. Then, according to that, you will not swear that you did not vote? A. Yes, I can swear I was not here.

Q. Why did you say that if you voted, you did not know it? A. I was nowhere at all; I went just right out of the Harbor and right down to the station.

Thomas McGuire, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. McGuire, where do you reside? A. Sailors' Snug Harbor.

Q. How long have you resided in the Harbor? A. Somewheres about thirteen years, I think.

Q. What election district do you reside in, Mr. McGuire? A. H; in the ninth district, I believe, across the dike.

Q. You believe it is in the ninth district? A. I think so, sir.

Q. What is the letter of the building? A. H.

Q. Were you in the Harbor on November 7, 1893? A. No, sir; I was up in New York, No. 17 Clarkson street, some days before and afterward.

Q. Did you vote at the general election held November 7, 1893, in Richmond county, ninth district? A. I do not know, sir.

Q. Did you vote at the election held November 7, 1893? A. Was that the presidential election, sir?

Q. No, sir.

Mr. Crosby — Did you vote last fall at the election? A. No, sir; I was up in New York.

Cross-examination by Mr. Glendinning:

Q. Do you know how many men are in the institution? A. No, sir; I do not.

Q. How many do you know personally? A. Not many; a few.

Q. How many? A. I could not tell exactly.

Q. How many could you mention by name? A. About four or five; I know plenty by sight, but do not know their names.

Q. You think there is about eight hundred men in the institution? A. I do not know.

Q. Do you know how many McGuires are in there? A. None but myself, as far as I understand.

Q. You say you only know a few at the institution? A. That's all.

Q. What becomes of the other eight hundred — how do you know but what that there are McGuires among them? A. I would hear their names, wouldn't I?

Q. Do you hear the roll-call? A. I hear them there, when they are calling to get their clothes, etc.

Q. How many buildings are on the grounds occupied by the men? A. I could not tell you that.

Q. You cannot tell me that? A. No, sir.

Q. How many are in the building that you are in? A. That I could not tell you.

Q. And you do not know how many buildings are on the grounds occupied by the men? A. I do not know; I do not want to tell a lie; I do not keep anything like that in my memory.

Q. You say you do not want to tell a lie, then you do not want to say that there are no other McGuires there? A. Not as I know of.

Daniel Patten, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Where do you reside? A. Sailors' Snug Harbor.

Q. How long have you resided in the Harbor? A. Five years.

Q. What election district do you reside in? A. No. 9, I think.

Mr. Mullen — The question should be what one he resided in on the seventh of November. The fact is that they have consolidated the districts known as Nos. 8 and 9, and have been since last fall.



By Mr. Kiendl:

Q. On November seventh were you in the Harbor? A. No, sir; in New York.

Q. Did you vote at the last election, general election, held on November 7, 1893? A. I did not vote then.

Cross-examination by Mr. Glendinning.

Q. What is your full name? A. Daniel Patten.

Q. How long have you been in the institution? A. Five years.

Q. How many in the institution are you acquainted with? A. Only a few.

Q. Then there are a great many there that you do not know? A. No, sir.

Q. Do not know their names either, do you? A. No, sir.

Q. So that if there are other Daniel Pattens there, you would not know them, would you? A. No, sir.

Q. You won't swear that you are the only Daniel Patten in that institution? A. No, sir.

Samuel Redding, duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. What is your full name? A. Samuel Redding.

Q. Where do you reside? A. In Sailors' Snug Harbor.

Q. In what election district are you? A. Town of Castleton.

Q. What building are you in? A. House F.

Q. Were you in the building on November 7, 1893? A. I was part of the time in the house; I came out of the hospital at one o'clock and got my discharge.

Q. Did you vote at the general election on the 7th day of November, 1893? A. I did not, sir.

Cross-examination by Mr. Glendinning:

Q. Mr. Redding, how many men are you acquainted with in that institution? A. By seeing them I am acquainted with the whole of them.

Q. By name? A. About twenty shipmates, and several men on the floor of the building with me.

Q. How many men in the institution, to your knowledge? A. Between a thousand and nine hundred; I have been fourteen years there.

Q. Do you know how many Reddings are in there, besides yourself? A. I do not think there is any.

Q. You do not think — you do not know, do you? A. I am not positive.

Q. There might be two or three Samuel Reddings and you would not know it? A. It might be; yes, sir.

Q. You only know about thirty or forty in the whole number? A. Shipmates.

Q. You say that you did not vote on the seventh of November last? A. Last November, no sir; I have not voted since the presidential election.

Q. Where were you on the seventh of November? A. Last general election?

Q. Yes. A. I was in the hospital for a week previous to the election, and got my discharge from the hospital on that day.

Q. Election day? A. On election day.

Q. What time? A. Between twelve and one o'clock.

Q. How do you know you did not vote on election day? A. Because I did not go outside the gate; I could not vote in the Harbor.

That is all.

Samuel M. Russell, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Russell, where do you reside? A. In the Harbor.

Q. How long have you resided in the Harbor? A. Five years.

Q. What election district do you reside in? A. The ninth.

Q. Were you in the Harbor on the 7th of November, 1893? A. I was.

Q. Did you vote at the last general election, held November 7, 1893? A. No, sir.

Cross-examination by Mr. Glendinning:

Q. Do you know how many are in the institution? A. Between 850 and 860.

Q. And how many out of that 850 or 860 do you know by name? A. Perhaps twenty or thirty.

Q. Not more than that? A. No, sir.

Q. All those you know by name, you know personally? A. Well, I know them; I know their names.

Q. The others you don't know, because you do not associate with them as much as with the others? A. That is it.

Q. So that among the balance that you do not know, there may be people by the name of Russell? A. No other Russells.

Q. You say there are no other Russells, but here are 850 men whom you do not know? A. I go by the books; no other Russell on the books of the institution.

Q. When did you examine the books? A. They are in the reception-room.

Q. When did you examine them? A. I see them every day or week; if there is any other Russell there, he came there within twenty-four or forty-eight hours.

Q. You say that you look at it every day? A. No, I do not.

Q. How often? A. When I have occasion to go there to look for a name.

Q. You do not mean to say that you have examined the list thoroughly, do you? A. Yes, very often.

Q. By simply going into the office and looking at the leaves? A. By going through the book, alphabetically.

Q. Tell us when you went through the book completely? A. Well, perhaps a week ago, looking through, looking for names.

Q. From the beginning to the end? A. No, sir.

Q. Is it not possible that a Russell may be in the institution and his name not be in the book at the time you looked at it? A. No, sir; if there is any Russell there, I should know it.

Q. How long do you say you have been in the institution? A. Five years.

Q. Do you mean to say that during that five years there has been no Russell other than you in it? A. There has been two or three, but none at the present time; there has not been for the last year.

Q. How long ago is it that a Russell other than you was in the institution? A. I think it is something about a year ago.

Q. Has not there been Russells there since that time? A. No, sir.

Q. You are positive of that? A. I am satisfied there has not.

Q. And the only reason for your stating that is that you say you looked in the records? A. Yes, the records in the reception-room; they are open to any one, and if there was any Russell in that institution I should know it.

Q. Could there not be other Russells at the time you looked at the book, and the name not be on the book? A. No, sir; I should know it.

Q. Might there not be any there under another name, under an alias? A. What is that?

Q. Now, listen; might there not be men by the name of Russell, right name Russell, registered in the institution under another

name? A. I know there is no Russells on the books; and every man that comes in, I am in a way of knowing his name or hearing it.

Q. Then there might be men in the institution named Russell that they call by other names — nick-names? (No answer.)

James B. Sanderson, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Sanderson, where do you reside? A. Sailors' Snug Harbor.

Q. How long have you resided in the Harbor? A. Seventeen months.

Q. Were you in the Harbor on November 7, 1893? A. Yes, sir.

Q. In what election district are you? A. Eighth.

Q. Did you vote at the last general election, held November 7, 1893? A. No, sir.

Cross-examination by Mr. Glendinning:

Q. Where were you on November 7, 1893? A. Knocking about the Harbor.

Q. In and out of the Harbor? A. Yes, sir.

Q. Around the election place? A. No; I was never near the election place.

Q. How many men in the institution? A. I do not know.

Q. You have heard about the number? A. I have not heard.

Q. How many do you think there is? A. Between eight hundred and a thousand.

Q. How many men do you know personally and by name? A. Two or three.

Q. Only two or three? A. Yes.

Q. You know their first names? A. Yes.

Q. Then the balance, over eight hundred, you do not know? A. No, sir.

Q. There may be men there by your name, first and last? A. Yes, sir.

Francis Sodenberg, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. What is your Christian name? A. Francis.

Q. Where do you live, Mr. Sodenberg? A. In "A" building, Sailors' Snug Harbor.

Q. At Sailors' Snug Harbor? A. Yes, sir.

Q. How long have you lived in the Harbor? A. Close on to eight years.

Q. And you were a resident of the Harbor on November 7, 1893? A. No, sir; I did not vote.

Q. Did you live in the Harbor at that time? A. I did.

Q. Did you vote at the last general election, held November 7, 1893? A. No, sir.

Cross-examination by Mr. Glendinning:

Q. How long do you say you have been in the institution? A. Close on to eight years.

Q. You have got a pretty good memory? A. Well, yes; I can remember well enough.

Q. Do you know where you were on the seventh of November last? A. I was in the Harbor.

Q. How do you know you were in the Harbor? A. I know it.

Q. Tell us the reason why you know it? A. Because I was not outside the gate.

Q. What day was the seventh on? A. I do not remember that — what day it was on.

Q. Do you know what took place on the seventh of November last? A. The seventh — that was election day.

Q. How many men are in that institution? A. I do not know.

Q. About how many men; you have heard about how many, haven't you? A. About eight hundred.

Q. How many do you know of that eight hundred, by name? A. Very few, sir.

Q. Very few that you know? A. I know them, but I could not call them by name.

Q. You do not know but what there are other men in that institution of the same name as yourself? A. I do not know.

Charles H. Thomson, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Thomson, what is your full name? A. Charles H. Thomson.

Q. Where do you reside? A. Sailors' Snug Harbor.

Q. How long have you been a resident of the Harbor? A. Eleven years.

Q. What election district? A. The ninth.

Q. You were a resident of the Harbor November 7, 1893, were you? A. Yes, I was.

Q. Did you vote at the last general election, held November 7, 1893? A. No, sir.

Cross-examination by Mr. Glendinning:

Q. When was the last time you voted? A. I did not vote any more than the presidential election.

Q. What year was that in? A. That is three times they voted; I do not recollect what year.

Q. Three times they voted, that you have not voted? A. For presidential election.

Q. How many men in the institution to your knowledge? A. I do not know, sir.

Q. About how many? A. I do not know.

Q. You have heard mentioned? A. I have not listened.

Q. About how many do you know personally? A. I do not know any of them.

Q. None of them? A. I know a messmate of mine, but I do not know his name.

Q. You cannot name any other men in the institution by name? A. No, sir.

Q. Even if there are any other men in the institution of the same name as yourself you would not know it? A. No, sir; I never ask.

Joseph Stetson, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Now, Mr. Stetson, where do you reside? A. Sailors' Snug Harbor.

Q. How long have you been a resident of the Harbor? A. Five years and a half.

Q. Were you a resident of the Harbor last November, 1893? A. No, sir.

Q. You lived in the Harbor November last, did you not? A. No, sir; I belonged to it, but I was not there.

Q. Did you vote at the last general election, held November 7, 1893? A. No, sir.

Q. What election district are you in? A. Ninth.

The Chairman — Where were you then? A. I was in Liverpool, England.

Cross-examination by Mr. Glendinning:

Q. When did you go to Liverpool? A. I went to Liverpool last June — about this time twelve months.

Q. You left the institution at that time? A. June or July.

Q. How many men in the institution do you know by name? A. I know a great many by name; a couple of hundred.

Q. Do you know a couple of hundred by name? A. About that; I know them all personally.

Q. By sight? A. By sight.

Q. You do not mean to say that you could name two hundred men who are in that institution? A. I do not say I could bring them before my memory; but if I saw them pass me I could name them.

Q. How many men are there in that institution? A. About eight hundred and seventy-five.

Q. Out of that 875, you say you know more than 200, if you saw them pass you? A. Yes, sir.

Q. Out of the balance, six or seven hundred, there might be men of the same name as you are? A. There is no one of my name in the institution but myself.

Q. You say that there are 600 men, and over, that you do not know? A. I have heard them say that I was the only Stetson in the institution.

Q. You would not swear that there are no other men in that institution named as you are? A. No, sir; I could not.

Mr. Crosby — When did you return from Liverpool, Mr. Stetson? A. I got here on the twenty-first of February last.

Mr. Kiendl — That is all I have for the present. I am informed this morning by our clerk, who serves the subpoenas, that the two most important witnesses, inspectors and watchers, were taken to Brooklyn, under a bond, I believe, to appear before Judge Gaynor and Judge Cullen, of Brooklyn, and, therefore, they are not here to-day.

Mr. Mullen — Judge Cullen is not in Brooklyn. I tried a case before him and finished it at half-past one o'clock this morning.

The Chairman — Will you have any other witnesses this afternoon, Mr. Kiendl?

Mr. Kiendl — I have the clerk of the institution, who made up that list.

Mr. Mullen — We object to any lists being offered in evidence unless they produce the originals.

The Chairman — We will see what list it is.

Mr. Kiendl — List made by Mr. Hodges.

The Chairman — Is that the list referred to?

Mr. Kiendl — Yes; made up and given in to-day. That objectionable part, that the committee ordered stricken out, is omitted.

The Chairman — What does the list purport to show?

Mr. Kiendl — It shows the names of inmates of Sailors' Snug Harbor that appear on the poll-lists of the eighth and ninth districts of the town of Castleton as voters, and who have stated that they did not vote, and those who died —

The Chairman — That is objectionable.

Mr. Kiendl — Names of inmates of Sailors' Snug Harbor, that appear on the poll-lists of the eighth and ninth districts, town of Castleton, as voters in the election held November 7, 1893, who are dead, absent or at asylums.

Mr. Mullen — That is not competent.

The Chairman — That should be received only in connection with the testimony, if received at all.

Mr. Crosby — Another objection is that it is in the present tense, and should show on the 7th day of November, 1893.

The Chairman — Can you obtain Mr. Hodges's attendance this afternoon.

Mr. Kiendl — I expect so; I see no reason. The main thing for coming here was for the purpose of getting the testimony of these old sailors.

The Chairman — I understand that you have sworn all the sailors of the Harbor.

Mr. Mullen — It seems to me the proper way to arrive at the truth of the identity of the individuals whose names appear upon the poll-lists of the eighth district and the ninth district would be to produce in the first instance the official poll-lists and identify all the names, and be satisfied of the names thus appearing, and then have them produce the witness, their clerk, for instance, who has the books in charge, where the original entries are made of the names, permit us an opportunity to inspect that book, with the copy that they propose offering in evidence, and if we are satisfied the copy agrees with the original names on the books, for the purpose of expediting matters, we will consent that the copy go in evidence for what it is worth.



The Chairman — Copies have already been introduced in evidence of these poll-lists have they not, Mr. Kiendl?

Mr. Kiendl — Yes, sir.

The Chairman — If you wish to examine these, they are open to your inspection, Mr. Mullen; they are part of the record.

Mr. Mullen — This proposition of the counsel is to produce a copy of entries that he finds upon the books of the institution. He produces a clerk that has copied these, and the opinion of the clerk is that these are the names of the men who are on the poll-list.

The Chairman — We accept this evidence, not as identifying the individuals any further than their names serve to identify them. It is only to save the committee the labor of going through and checking up names that appear to be the same. Whether the identity of the names sufficiently proves the identity of the individuals is a question that this witness does not pretend to settle; and that is open to argument, as the counsel may see fit. This evidence, if we take it, will be simply the evidence of the clerical act of the comparison of the names with lists which are in evidence, and which the counsel can make any comparison of that they see fit to do, and thus detect any errors in the statement.

Mr. Mullen — Who is this clerk, and where is this list?

The Chairman — It is Mr. Hodges.

Mr. Mullen — Is he an official in the institution?

The Chairman — He is an official in the institution.

Mr. Mullen — If he will come forward and identify that list to assist the committee, we will expedite matters in that way.

Mr. Kiendl — It is in.

Mr. Mullen — I understand from Mr. Curran, my associate, that that is already admitted in evidence. Now, in this cumulative evidence?

The Chairman — We did not admit it in evidence.

Mr. Kiendl — I offer it now.

The Chairman — We are not in a position to receive this list until Mr. Hodges comes on the stand and identifies it. These are new lists, and I think we can only receive them in connection with Mr. Hodges's testimony.

The Chairman — We want to make this suggestion. We are here now in a convenient place where any inmates of the Sailors' Snug Harbor can be produced as witnesses upon any question

that may arise, and we suggest to the other side, the contestees, whether they desire to swear any of the inmates of the Sailors' Snug Harbor, or produce any of the evidence which is now accessible to us.

Mr. Mullen — Do you mean to-day?

The Chairman — Yes, sir.

Mr. Mullen — We do not expect to do it.

The Chairman — We do not call upon you to do it, but suggest as a matter of convenience, whether you wish to do it.

Mr. Mullen — We shall either have to ask the committee to come again, or get the witnesses to go to Brooklyn.

Mr. Crosby — Mr. Kiendl, have you concluded your testimony on the Island to-day, except the calling of the clerk of this institution?

Mr. Kiendl — Yes, sir.

Mr. Crosby — What is the reason that you cannot send and get him and close the work to-day?

Mr. Kiendl — I think we could get him.

Mr. Mullen — It is, perhaps, just as well, on the eve of Decoration Day, that we should adjourn and call this witness to Brooklyn.

Mr. Mullen — I would state to the committee that in the meantime, between the time we adjourn and the time we sit in Brooklyn, when do you propose to sit in Brooklyn?

The Chairman — Thursday morning.

Mr. Mullen — We cannot produce our witnesses by that time; but as soon as the contestants close, we will ask reasonable time in which to prepare, and produce witnesses in rebuttal.

Mr. Kiendl — I will state now that I will be closed on Thursday morning. I think it is going to be made very short.

Mr. Mullen — You may change your mind; it may not be made short, if this witness is produced and the books are introduced, and he undergoes a strict cross-examination.

Mr. Mullen — I shall not be before the committee again. Mr. Taylor and Mr. Curran, and these gentlemen associated with Mr. Taylor, will appear before the committee.

The Chairman — We will adjourn the further hearing until Thursday morning, at ten o'clock, in the Common Council Chamber, in the City Hall, in the city of Brooklyn.

## PROCEEDINGS.

CITY HALL, BROOKLYN, *May 31, 1894, 10 o'clock A. M.*

Present — All the committee.

Mr. Kiendl appeared for the contestants, and Mr. Curran for the contestees, in the sixth district contest.

Mr. Mirabeau L. Towns appeared for the contestees in the second district contest.

The Chairman — In the matter of the hearing in the Sixth Senatorial District contest, we will now adjourn to the Raymond street jail, for the purpose of taking testimony at the office of the keeper. When we conclude the taking of testimony there, we will return to this room.

If any of the representatives of the parties in the second district contest are present, we will announce to them that upon our return we will take up the question of proceeding in that case.

The committee then adjourned to the Raymond street jail, where the following proceedings were had:

Kenneth F. Sutherland was produced before the committee.

Mr. Kiendl — Mr. Sutherland, I serve you with a subpoena in the matter of the contest for seats in the constitutional contest of delegates in the sixth district.

The Chairman — This is a contest over the right of the delegates to the Constitutional Convention to their seats, and we want to take your evidence in the matter, with the other witnesses who have been sworn.

Mr. Sutherland — Well, I shall refuse to give any.

The Chairman — Will you be sworn?

Mr. Sutherland — No, sir; I refuse to be sworn, and refuse to give any evidence.

The Chairman — The committee calls upon you, Mr. Sutherland, to be sworn in this proceeding and directs you to be sworn and to testify.

Mr. Sutherland — I refuse to be sworn and to testify.

Mr. Crosby — Let him state on what grounds he refuses.

Mr. Gibney — Do you wish to state any grounds?

Mr. Sutherland — No, sir; I do not.

Mr. Crosby — Will you make a voluntary statement, not under

oath, regarding the November election of 1893, in the town of Gravesend?

Mr. Sutherland — No, sir; I will not.

Mr. Kiendl — Mr. Sutherland, is your objection on the ground that the Attorney-General, or any one else, has advised you not to make a statement, or to testify?

Mr. Sutherland — I have not been advised by any person.

Mr. Crosby — I ask the gentleman to make a statement embodying only what purports to be contained in the confession which was read by Mr. Shepard, in the Court of Oyer and Terminer, on the 29th day of May, 1894.

Mr. Sutherland — I will say, gentlemen, that I refuse to answer any further questions whatever.

Mr. Crosby — I ask the gentleman this question. Did you make a statement, which was reduced to writing, and a portion of which was read in open court, in the Court of Oyer and Terminer, Kings county, on the 29th day of May, 1894, in which court you were then a defendant, which portion reads as follows:

“From my knowledge of the election of 1893, held at Gravesend, including the direct knowledge I had, and the knowledge which came to me indirectly, I estimate the number of fictitious votes cast at that election in the second election district, to have been between eight and nine hundred; the total number of fictitious votes on that day cast in all of the districts, to have been between fourteen and fifteen hundred. The actual votes cast at that election were about twenty-one or twenty-two hundred in number. The actual number of votes cast in the year 1892, at the election in Gravesend, was 2,000 or 2,100, and there were cast in 1892 about 1,000 or 1,100 fictitious ballots. In both years the fictitious ballots cast were what is known as the straight Democratic ticket. In Gravesend the Democrats and Republicans were united. There has been practically no difference in Gravesend between Democrats and Republicans. In the elections of 1888, 1889, 1890, and 1891, the vote of Gravesend was cast for the Republican tickets, and the votes in those years were to some and an increasing extent, fraudulent and fictitious, but not to the same extent as in 1892 or 1893. I am unwilling to inculcate any other person, and am willing to take upon myself without sharing with any one else, the burden of what I myself did in the second election district on last election day. I folded, with my own hands, two lots of paper ballots, each 100 or 200 in

number, which were fictitiously cast in my presence on that day. I have placed in the hands of Mr. Shepard, the Deputy Attorney-General, a full statement of my participation in the whole crime, including the concealment of the registry list and the casting of fictitious votes, given upon his examination of me."

The Chairman — What is your answer to that.

Mr. Sutherland — No answer.

Mr. Crosby — Now, Mr. Chairman, I ask you to direct this witness to be sworn and testify, unless he claim a legal privilege. The bare refusal, without giving any reason, does not excuse him from the liability of being punished for contempt by the Convention. If he will make a legal objection, claiming a privilege which the law recognizes, we should excuse him; but otherwise not.

The Chairman — I think it ought to clearly appear, if we can make it so, upon the record; and I, therefore, ask the witness to answer this question, unless he claims his privilege on legal grounds.

Mr. Sutherland — I shall refuse to be sworn, and refuse to answer any questions. Any question I may answer might be made to incriminate myself further than I have already gone, and I shall certainly refuse to go any further.

The committee then adjourned to the Common Council Chamber, City Hall, where the proceedings were continued.

The Chairman — The committee will announce to the parties in the second district, that the proceedings in that case will be set down for Tuesday, the twelfth day of June, at ten o'clock in the morning, in this room; and the committee will issue subpoenas to the contestants for that day, and proceed with the taking of testimony upon that day in that district; and no proceedings will be taken until the twelfth of June in the second district matter. Upon that day the parties must be ready, in order that the committee may proceed diligently with the work.

The parties will now proceed with the sixth district contest.

John B. Byrne, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Byrne, what is your business? A. Clerk of the Supreme Court — of the Oyer and Terminer of the Supreme Court.

Q. Were you such clerk in the last year past? A. I was.

Q. Do you produce from the files of your office the county clerk papers in the matter of Kenneth F. Sutherland? A. I do; shall I state what they are?

Q. If you please. I would like to get the one that Mr. Kenneth F. Sutherland was tried on.

Mr. Curran — We object to this as immaterial, irrelevant and incompetent.

The Chairman — This is the record of conviction? A. These are the indictments.

Mr. Kiendl — Have you got the one that he was convicted on? A. Indictments were brought in against Kenneth F. Sutherland in the Court of Sessions by the grand jury of the May term, and on motion of, I presume, Mr. Shepard, Edward M. Shepard, Deputy Attorney-General and assistant district attorney, the indictments were transferred to the Court of Oyer and Terminer. On said indictment the defendant was arraigned on Monday morning, the twenty-eighth of May, and, by Mr. Justice Gaynor, set over to plead on the twenty-ninth, Tuesday morning.

Mr. Kiendl — I offer in evidence the indictment.

The Witness — The indictment is marked 6219, D.

Q. Against whom? A. Against Kenneth F. Sutherland.

Q. For what? A. For inducing an inspector of election to make a false canvass in the second district of Gravesend.

The Chairman — Is that the one on which the defendant plead guilty? A. The defendant pleads guilty on the 29th day of May, 1894.

The Chairman — We receive that.

Mr. Kiendl — What was done after that?

Mr. Curran — I object to that.

The witness read as follows: "At a Court of Oyer and Terminer, holden in and for the county of Kings, at the court-house, in the city of Brooklyn, on the 29th day of May, in the year of our Lord 1894, present, Honorable Willard Bartlett, one of the justices of the Supreme Court, and justice of the Oyer and Terminer. The People of the State of New York against Kenneth F. Sutherland. Indicted for inducing an inspector of election to make a false canvass in the second district, Gravesend, and convicted of said crime upon his own confession and plea of guilty, whereupon it is ordered and adjudged by the court that the said Kenneth F. Sutherland, for the felony aforesaid, whereof he is convicted, be imprisoned in the State's prison at Sing Sing, at

hard labor, for the term of one year and eight months; and that the imprisonment aforesaid commence with the termination of the term of imprisonment in the penitentiary of the county of Kings, to which he was heretofore sentenced on the indictment for oppression, and convicted in this court, on the 19th day of March, 1894. A true extract from the minutes."

Mr. Kiendl — Have you a statement filed in your office of what was said in open court by Mr. Sutherland, or by Mr. Shepard, in Mr. Sutherland's presence —

Mr. Curran — I object to that, if the committee please.

The Chairman — He may answer the question.

A. No, sir.

Mr. Kiendl — I now read you a statement that was read in open court.

Mr. Curran — I object to that as wholly improper.

Mr. Crosby — Was the confession filed in the clerk's office?

Mr. Kiendl — There was no confession filed. There was a statement made by the prisoner through Mr. Shepard.

Mr. Crosby — I think you had better subpoena Mr. Shepard.

The Chairman — Yes; I think so.

Mr. Crosby — Issue a subpoena to Mr. Shepard, and have it served immediately.

Mr. Kiendl — I simply want to show the statement made there. If they want to contradict it, they can contradict it by the man that made it, if they see fit. I think it is a matter done in open court and is part of the record, and was taken into consideration by the court.

The Chairman — You may proceed and ask your question.

Mr. Kiendl — Was this statement made, or a statement of which, to the best of your recollection, this is the substance of what was said in open court, as a part of the proceedings, and a part of that which entered into the court's making up its judgment in finding the defendant guilty, and sentencing the defendant? I read: "From my knowledge of the election of 1893, held at Gravesend, including the direct knowledge I had and the knowledge which came to me indirectly, I estimate the number of fictitious votes cast at that election in the second election district to have been between eight and nine hundred; the total number of fictitious votes on that day cast in all of the districts to have been between fourteen and fifteen hundred. The actual votes cast at that election were about

twenty-one or twenty-two hundred in number. The actual number of votes cast in the year 1892 at the election in Gravesend was 2,000 or 2,100, and there were cast in 1892 about 1,000 or 1,100 fictitious ballots. In both years the fictitious ballots cast were what is known as the straight Democratic ticket. In Gravesend the Democrats and Republicans were united. There has practically been no difference in Gravesend between Democrats and Republicans. In the elections of 1888, 1889, 1890 and 1891 the vote of Gravesend was cast for the Republican tickets, and the votes were in those years to some and an increasing extent fraudulent and fictitious, but not to the same extent as in 1892 or 1893. I am unwilling to inculcate any other person, and am willing to take upon myself, without sharing with any one else, the burden of what I myself did in the second election district on last election day. I folded with my own hands two lots of paper ballots, each 100 or 200 in number, which were fictitiously cast in my presence on that day. I have placed in the hands of Mr. Shepard, the Deputy Attorney-General, a full statement of my participation in the whole crime, including the concealment of the registry list and the casting of fictitious votes, given upon his examination of me."

The Chairman — We think you had better not ask the question in that manner. If the witness has any recollection of the statement, we will permit him to testify to it.

Mr. Kiendl — Now, Mr. Byrne, have you any recollection of what took place at that time, and, if so, please state what it was?

The Chairman — Ask him if he has any recollection first.

Mr. Kiendl — Have you a recollection? A. I have a recollection of some part of the proceedings; yes, sir; that is, of that that I ought to take particular notice of.

Q. Have you a recollection of a statement that was made in court at that time? A. I have; I have a recollection that one was made.

Q. Will you please state to the committee what that was, as nearly as you can, and, if this was the substance of that statement.

The Chairman — No; ask him to state his recollection of any statement, and who made it; we will take that.

Mr. Crosby — And that it was made in the presence of Kenneth F. Sutherland.

Q. Now, will you please tell us if you have a recollection of such a statement, and it was made in the presence of Mr. Sutherland, by whom it was made, and what it was? A. Well, I will state that I called Kenneth F. Sutherland to the bar, and the first thing I



asked him was how he plead; he said he plead guilty; I asked him how he would plead, and he said he would plead guilty; I know he took his seat; Mr. Shepard, Deputy Attorney-General, arose and made a statement —

Mr. Curran — I object to what Mr. Shepard did, as not binding upon us.

Mr. Kiendl — Please state what he said.

The Chairman — Ask him if Mr. Shepard read from a paper.

Mr. Kiendl — Did he read from a paper? A. He did.

Q. Will you please state what he read?

Mr. Curran — I object to what Mr. Shepard did, as not binding the statement itself.

The Chairman — We will overrule the objection and take the statement.

I will state to the counsel the reason why this statement is taken. Sutherland has been subpoenaed before the committee, and has refused to answer any questions whatever or to make any statement, and, in connection with his refusal, we think it proper to take proof of the fact that he did either make, or by his silence acquiesced in, a previous statement, for the purpose of showing that he had information which would be of value to the Convention and to the committee in this investigation.

Mr. Crosby — For the purpose of aiding the Convention in what action it will take upon the refusal of Sutherland to testify and the evidence is taken solely for that purpose.

The Chairman — It is for the purpose of enabling the Convention to deal with Sutherland.

Mr. Curran — It is not to be a part of the testimony in chief in their case?

The Chairman — We do not consider it for that purpose.

Mr. Kiendl — Now, did you hear this statement made by Mr. Shepard in Sutherland's presence? A. I heard Mr. Shepard make a statement; I may recall some portions of it, if you read it.

Q. Will you read that, please, and see whether that is the substance of what he said at that time? (Mr. Kiendl presents to witness newspaper clipping.)

Witness reads extract aloud (given above).

Mr. Curran — I do not see how that is competent.

The Chairman — Take the fact that the statement was made and the substance of it? A. Well, I should say, from where it is

marked here, "From my knowledge of the election of 1893," and ending "fictitious votes, given upon his examination of me," should say that was probably what was said; I could not say positively, because I do not pay attention to these things.

Q. It is the substance of what was said? A. I should think it was the substance; that it was fairly reported.

The Chairman — That is in accordance with your present recollection? A. I should say that; yes, sir.

Mr. Curran — That statement was not made by Mr. Sutherland? A. No; it was made by Mr. Shepard; Mr. Sutherland was present during the whole proceeding.

Mr. Kiendl — And did not contradict nor say anything in opposition to what had been read by Mr. Shepard? A. He made no contradiction to anything that was said.

Q. Did the court, in passing its judgment, state that it had taken into consideration the confession and statements made in court in passing sentence upon the defendant? A. The court substantially said that the defendant having given himself up, that he could not be extradited under the laws, because it was a political offense, and he could not be brought back; and the substance of Justice Bartlett's idea was saving the county a trial; and, taking into consideration the conviction and sentence by Justice Brown, he made the sentence one year and eight months.

Mr. Curran — He did not take into consideration the alleged confession read by Mr. Shepard? A. That I could not say positively; but not being extraditable, I think that was more than anything else the reason, and saving the county the expense of a trial; I could not say positively whether Judge Bartlett said that or not.

Mr. Kiendl — Was not that statement made by the Attorney-General at the time, and before the court passed sentence upon the defendant? A. That he made the confession?

Q. Yes. A. I think he did.

Q. And did not the Attorney-General state, in substance, that he asked the court to take into consideration that fact, and all the other facts, in passing sentence upon the defendant? A. I think the Attorney-General asked the court to take into consideration all the facts surrounding the matter of Kenneth F. Sutherland; and it was a case not for too long sentence, and it was one that justice should be lenient with; virtually that.

Q. And the statement made was a part of all the surrounding facts and circumstances?

Mr. Curran — I object.

A. I should say so.

The Chairman — Who was Mr. Shepard? A. Mr. Shepard was Attorney-General, and also assistant district attorney at this time, because I undersand he was acting as assistant district attorney, or Deputy Attorney-General.

Q. He was acting at this time? A. The court so understood it in everything that was done there.

Q. The court recognized him as such? A. I believe it did.

Edward M. Grout, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Grout, where do you reside? A. In the city of Brooklyn.

Q. What is your profession? A. I am a lawyer.

Q. You are a member of what firm? A. De Fere, Grout & Mayer.

Q. Prior to November, 1893, what was the firm name? A. Gaynor, Grout & De Fere.

Q. On the seventh of November did you go to Gravesend? A. I did.

Q. That was election day? A. Yes, sir.

Q. What time in the morning did you arrive there? A. Shortly after six o'clock, I think; I am not sure; it was before the opening of the polls.

Q. How did you go down there? A. I went down in a coach.

Q. Who was with you? A. I do not recall the names at this length of time; let me see; Mr. Hyde, Mr. Palmade, Mr. Mitchell, Mr. Marshall, Mr. Schmidt — I cannot give you all the names.

Q. Now, what happened when you arrived at Gravesend? A. We were stopped about one hundred feet from the town hall by Mr. Newton and a number of policemen and some others.

Q. Just what took place there?

Mr. Curran — I object to this testimony. It has got nothing to do with the election of officers.

The Chairman — We overrule the objection and will take the evidence.

Mr. Kiendl — Mr. Newton was there, was he? A. Yes, sir.

Q. And he is one of the convicted election officers? A. No; he was not an election officer.

Q. What was his position? A. Well, I don't know; he may .

have had something as justice of the peace; he was justice of the peace.

Q. And in that way he was connected with the matter of the election? A. I do not know about that.

Q. Making up registry lists, etc.? A. Well, I do not know what his duties were.

Q. He held the office of justice of the peace, is that correct? A. Yes, sir.

Q. What was the object of your visit to Gravesend? A. Some of my party had watchers' certificates.

Mr. Curran—I object to it as immaterial and improper—what his object was.

Mr. Kiendl—They went down there as watchers.

The Chairman—Let the witness state just what took place down there. A. If I state what was said and done there, it will give the object.

Mr. Kiendl—State what was said and done at that time.

A. I was in the first carriage; there were two behind me, and we were stopped. I looked out of the door and saw Mr. Newton. He said: "You cannot go any further." I said: "Some of my party"—or I says: "We have watchers' certificates." He says: "I do not care what you have; you cannot go any further." I then said: "We have something more. We have an injunction order signed by Justice Barnard, restraining you and every one else from interfering with us as watchers." Then I stepped from the carriage and says: "I serve you with the order." He retreated and told me he did not care a God damn for all the courts and justices in the State, I could not go any further. I then proceeded to serve him with the order, walking towards him, and held up the original copy. He walked away and the policemen who were with him stepped in between and prevented me going any further.

Mr. Curran—I object to this, and move to strike it all out. Mr. Newton, justice of the peace, was not an election officer, and had nothing to do with the election. I do not see what relevancy it has to this examination at all.

The Chairman—We overrule the objection and deny the motion.

Mr. Kiendl—Mr. Grout, by whom were the certificates of election issued? A. The Republican general committee for the county; they were signed by Mr. Buttling and Mr. Ray, the chairman and secretary.

Q. Did you exhibit those papers? A. No; I did not exhibit the watchers' certificates; I exhibited the injunction order, which I regarded as the stronger paper.

Q. The injunction order was signed by Justice Barnard? A. The injunction order was signed by Justice Barnard.

Q. After you had this interview, what was done with you and your party? A. We were driven out of the place shortly afterwards.

Q. By whom? A. Well, there was a crowd that came from the town hall, a crowd of men; I do not know whether any police took part in it or not; the police were right there as near as you are to me at the time, and I am not able to say now that they took any part in driving us out.

Mr. Curran — I object to what they did.

The Chairman — We are going to take proof of the occurrences down there at this time. We will take proof of what was said and done, under your objection.

A. I had previously served the injunction order on one or two of the police officers; they refused to permit me to proceed, or any of my party.

Mr. Kiendl — Did the police that you saw there offer any protection to you or not? A. They did not.

Q. Now, do you know how many people were there at that time, that you first arrived there? A. No; I saw altogether perhaps twenty-five or thirty down where we were, but I could see a much larger crowd up nearer the town hall.

Q. You were about fifty feet from the town hall? A. What is the distance in the statute?

Q. One hundred and fifty feet. A. We were right there by a paster booth; I suppose that was the distance.

Q. Who else was with you there at that time upon that day? A. Well, do you mean in my own immediate party?

Q. Or of the party that went down with you? A. There were others who started at the same time with me who came by another road.

Q. Who was there? A. Col. Bacon and his party; Bacon, and Doubleday, and Morse, etc.

Q. Did you see them upon that day? A. I saw them later in the day.

Q. Did you see them when they were at Gravesend? A. No.

Cross-examination by Mr. Curran :

Q. Was there a watcher's certificate from the Republican general committee granted to any other person? A. I have no personal knowledge of anything, further than that I have heard statements.

Q. That there were such? A. I have heard statements ; I do not believe them.

Q. You were a resident of the city of Brooklyn at that time? A. I was.

Q. Did you understand that watcher's certificates were granted to residents of Gravesend? A. I did not so understand ; I understand there has been a pretense of it since the election.

Q. Whom did you serve that injunction on ; you say on police officers? A. Two of the police officers and upon Mr. Newton.

Q. Were you in any bodily danger at any time down there? A. Well, when I was trying to hand Newton the copy the policeman raised his club over my head and told me if I took another step, I would get a clubbing ; I do not know what you call that.

Q. He did not strike you? A. I did not take the other step ; I think he would have, if I had done so ; some of my party were struck right there in my presence.

Mr. Curran — I object to that.

A. You asked me if there was any bodily danger?

The Chairman — You need not take that in answer to your interrogatory, if you do not wish to do so, Mr. Curran.

Redirect-examination by Mr. Kiendl :

Q. Mr. Grout, were any of your party arrested? A. Not of my party ; some of Col. Bacon's party were.

Q. Some of the party that went down with you, that is, with Col. Bacon and you and the rest were arrested? A. Yes, sir.

Q. Were they confined in the jail there? A. The only personal knowledge I have is the fact that I got one of them released later in the day on a writ of *habeas corpus*.

Q. You say some of your party were struck by the police? A. I would not say that one of the police officers struck them ; but they were struck right in the immediate presence of the police officers, and there was no interference by the police to protect them.

Charles C. Overton, being duly sworn for the contestants, testified as follows :

By Mr. Kiendl :

Q. Mr. Overton, where do you reside? A. Coney Island.

Q. What is your business? A. Publisher of a newspaper — the Kings County Journal.

Q. That paper is circulated in the town of Gravesend, is it not? A. Yes, sir.

Q. What district do you reside in? A. The second district.

Q. Were you at the town hall on election day? A. Yes, sir.

Q. What time of day did you arrive at the town hall? A. I think about nine o'clock in the morning.

Q. How long did you remain there? A. I remained there until the polls were closed, off and on; I was there when the polls closed.

Q. Will you describe to the committee how the location of these booths is arranged at the town hall; how many are there of the districts in that town? A. Six districts in the town.

Q. And they are all in one building, are they not? A. Yes.

Q. And all under one ceiling — the ceiling is all one, and they are partitioned off? A. Yes, sir.

Q. How large is each one of these election booths? A. I should say they were about twelve by fifteen feet.

Q. You say you reached there about nine o'clock in the morning? A. Yes, sir.

Q. Was there any line of voters in front of the second election district in which you voted at the time you arrived there? A. No, sir.

Q. Was there anybody else in the booth at the time that you went to vote? A. Yes, sir.

Q. Was there a long line or any line? A. There was no line.

Q. Was there any long line, or any line there, during the time that you remained there? A. Yes; there were times when there were ten or a dozen in the line.

Q. Did that line extend outside the building? A. Yes, sir.

Q. And for how long a period did that line remain outside of the door while you were there?

Mr. Curran — He did not say they were outside of the door.

The Chairman — He said they extended outside of the building.

The Witness — I think once or twice during the day I saw a line extend out through the door in the second district; I saw no line in any other district; two or three were outside of the building.

Q. Do you know how many could stand inside of the building there, where the ballots were distributed, before they reached the door, how many men could stand there? A. I should think six or eight.

Q. No more than that? A. I think not; no, sir.

Q. And you only saw that line a part of the time? A. I only saw it two or three times during the day.

Q. During the entire time you were there? A. Yes, sir.

Q. Now, how many doors are there to the second election district polling place; is there more than one entrance? A. I think there is a door, and a window, that was used for a door; I would not be quite sure about that; I know there is a door, and I think there was a window, and the window was used for a door besides.

Q. But you are not certain about that? A. I am not certain about that.

Q. What time did you vote? A. I think somewhere between nine and ten o'clock.

Q. And your number was what, if you know?

Mr. Curran — I object to that as immaterial.

The Chairman — Well, let him state, if he remembers.

A. Well, I am not positive; I think it was three hundred and seventy something; I would not be sure about that.

Q. How long have you lived in the town of Gravesend?  
A. Eighteen years.

Q. And you are still living there, are you not? A. Yes, sir.

Q. You are pretty well acquainted with the vote of the voting population of that town, are you not? A. Yes, sir.

Q. And you have been an official of that town, have you not?  
A. Yes, sir.

Q. And you are a town official to-day, are you not? A. Yes.

Q. What position do you hold? A. County auditor.

Q. Do you know the vote of the town of Gravesend at the last election? A. Yes, sir.

Q. The spring election I mean? A. Yes, sir.

Q. Can you give us the vote of the second and third districts of that town?

Mr. Curran — I object to that as immaterial, what the vote at the spring election was.

The Chairman — We will take the fact, if it is within the knowledge of the witness.

A. I can tell you positively, if you will let me see the Journal.

Q. Is that your paper that you publish (paper shown witness)?  
A. Yes, sir.

Q. And these facts were gathered by you, were they not?

Mr. Curran — I object to that. He says he cannot state without that.



The Chairman — He has stated that that is a copy of the paper that he publishes, and that he collected the statistics. I think the committee will permit him to refresh his memory from examining the paper.

Mr. Kiendl — Will you kindly do so? A. In the second district there were 423 votes polled for supervisor.

Q. The third district? A. Three hundred and thirteen votes.

Q. The first district? A. Two hundred and ninety votes.

Q. The fourth district? A. Three hundred and fifty-eight votes.

Q. The fifth district? A. Two hundred and twelve votes.

Q. The sixth district? A. Two hundred and sixty-seven votes.

Q. You had the same number of election districts at the spring election that you had at the fall election, in November, 1893, did you not? A. Yes, sir.

Q. And voted from the same registry list? A. Yes, sir.

Q. What was the total vote in the town? A. At the spring election?

Q. Yes, sir. A. One thousand eight hundred and sixty-three votes for supervisor.

Q. Was not that election a very exciting and hotly-contested election? A. It was; yes, sir; as much so as any election ever held in the town.

Q. As great as any that was ever held in the town, to your knowledge? A. Yes, sir.

Q. In eighteen years? A. Yes, sir.

Q. Is the vote, as given there, in your opinion, from what you know of the town, having lived there for eighteen years or so, the right vote for the second district of the town of Gravesend? A. Yes, sir.

Q. How many votes do you believe, in your opinion, would be the legal voting population of the second district of the town of Gravesend?

Mr. Curran — I object to that. They have not proven that he is a lawyer, or can give a legal opinion. He has not proven himself to be an expert.

The Chairman — I think we will take his estimate of the number of voters. It is a mere estimate. We will take it for what it is worth.

A. Four hundred and twenty-five votes.

Mr. Kiendl — What, in your opinion, would be the legal voting population of the third district of the town of Gravesend?

Same objection and ruling.

A. About three hundred and twenty-five votes.

Q. What, in your opinion, would be the legal voting population of the first district of the town of Gravesend? A. About three hundred votes.

Q. Now, Mr. Overton, you were present in the Court of Oyer and Terminer at the time Kenneth F. Sutherland was arraigned and pleaded guilty, were you?

Mr. Curran — I object to that.

The Chairman — The witness may answer that question. The question only calls for the fact, whether he was present in court at a certain time.

A. Yes, sir.

Q. Did you hear a statement read by Mr. Shepard in the presence of Mr. Kenneth F. Sutherland? A. Yes, sir.

The Chairman — We will not take the substance of that.

Mr. Kiendl — I simply want to show that he made no objection.

The Chairman — You may ask him that.

Mr. Kiendl — Did Mr. Sutherland, at that time, raise any objection, or offer any explanation, or make any contradiction of that statement made by Mr. Shepard, the Attorney-General?

Mr. Curran — I object to that.

The Chairman — The objection is overruled.

A. No, sir.

Q. Did you hear whether the court made any statement at that time, that they took the matter of the statement or confession into consideration in passing sentence upon the defendant in that case at that time?

Mr. Curran — I object to it as incompetent and improper.

The Chairman — We sustain the objection.

Cross-examination by Mr. Curran:

Q. You state that you do not know the number of your official ticket. You say you do not know whether it was three hundred and seventy — It might be two hundred and seventy — might it not? A. It might; yes, sir.

Q. That paper that you have read from, is that correct? A. Yes, sir; it was a correct statement.

Q. Taken from the poll-list on the evening of election? A. I took it myself.

Q. The number of votes polled upon that day is correctly stated in that paper? A. From the poll-list; I believe there were some

changes made afterward on the official canvass, some few votes; but these figures were taken from the poll-list on the night of election by me.

Q. They are not absolutely correct, are they? A. They are correct of what they represent to be.

Q. They are not the official canvass? A. They are not the official canvass; no, sir; I believe there were some half dozen votes' difference; some tickets were thrown out afterward by the official canvass for some reason or other.

Q. Were you at the polls all day election day? A. No, sir.

Q. You said you were there from nine o'clock until the close of the polls — you do not mean to say you were inside of the polling booth all the time? A. No, sir; I did not testify to that, I think; I did not mean to; I was not there all day; I was in and out and around the building.

Q. Then there might have been lines there in the second district many more times than you have testified to? A. Yes, sir.

Q. And so in regard to the other districts? A. I do not know anything about them.

Redirect-examination by Mr. Kiendl:

Q. You were in the neighborhood of the building all the time that you were there, that you testified you remained there, three hours or two and one-half hours, was it, that you were there? A. I was not there all day; I came to Brooklyn during the day.

Q. How many hours were you there? A. During the day?

Q. Yes; on election day? A. I suppose four hours.

Q. During that time you were always in the immediate neighborhood of the polling place, were you not? A. Well, I was around the hall where I could see it.

Q. And all the voting was done at the town hall? A. Yes, sir.

Q. And you could see what was going on at the outside of the polling place, where you were stationed at that time? A. Yes, sir.

Q. The polling places are on two sides of the building, three on each side? A. Yes, sir.

Q. There is an alleyway running alongside the building entering three of the polling places?

Mr. Curran — I object to that as leading.

The Chairman — Let him describe.

Mr. Kiendl — How are the polling places located?

Mr. Curran — I object to it on the ground that he has already asked him that upon direct-examination, and that the witness has testified to it.

The Chairman — I think the arrangement of the booths in that place has been shown by previous witnesses. Is it a matter about which there is any conflict liable in the testimony?

Mr. Kiendl — I desire to show that he stood in such a position that he could see three of the polling places during most of that time.

A. Yes, sir.

Recross-examination by Mr. Curran:

Q. You testified that you were four hours down there? A. I should say about four hours.

Q. If you have already testified that you were there from nine until the close, it is not true, is it? A. I have not testified so.

Q. If you have testified so, it is not true? A. Yes; because I was not there.

Richard Schermerhorn, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Schermerhorn, where do you reside? A. 183 Prospect place, Brooklyn.

Q. What is your business? A. Civil engineer and surveyor.

Q. Have you a place on Coney Island, Gravesend? A. I have an annex; my office is at 168 Montague street, Brooklyn.

Q. How long have you been familiar with the town of Gravesend and the inhabitants? A. Twenty years.

Q. Did you make a canvass of the voters — the voting population of the town of Gravesend?

Mr. Curran — I object; he was not duly authorized to make a census, and anything he might make, would be wholly incomplete and binding upon us.

The Chairman — Objection overruled.

A. I did.

Q. When did you make that canvass? A. December, 1893.

Q. How was that canvass made? A. That was made through the personal knowledge of myself and my partner, Mr. S. C. Voorhies, and the evidence that we both obtained through interviews with men well known to us in a canvass made personally by myself with others of the poll-lists of the election of the 7th of November, 1893.

Q. What was that canvass so made, made for, when it was first made, and for whom?

Mr. Curran — I object to that, for what purpose it was made, as immaterial and improper.

Mr. Kiendl — I will not press it.

The Chairman — I think if the witness states what he did in respect to making this particular canvass, that that is as far as the committee will permit him to go —

Mr. Kiendl — I will not press it.

Q. From such canvass as you have stated you made, what did you find the voting population, or what, in your opinion, is the voting population of the first district of the town of Gravesend.

Mr. Curran — I object to it on the ground that the witness has testified himself that he made an incomplete canvass; it was really no canvass at all, made from the personal knowledge of two or three people. He has not visited the places or localities.

The Chairman — We will take the results of what he did and use it for what it is worth.

Mr. Kiendl — You may state what is the voting population of the town of Gravesend, of the first district of the town of Gravesend? A. From my canvass I estimated the voting population of district No. 1 to be 287.

Q. District No. 2? A. Four hundred and eighty-seven.

Q. District No. 3? A. Three hundred.

Q. District No. 4? A. Two hundred and eighty-four.

Q. District No. 5? A. One hundred and sixty-six.

Q. District No. 6? A. Two hundred and eleven; total for all 1,734.

Cross-examination by Mr. Curran:

Q. You do not mean to say that in the first district there are not more than 287 votes, do you? A. I say that each district —

Q. As you have stated, these are the legal voters? A. I said that is an estimate of my canvass of the poll-list; I came within three of it.

Mr. Curran — I move to strike it all out. His canvass is wholly arbitrary.

Q. How long do you say you have resided there? A. I have resided in Brooklyn and done business in Gravesend for twenty years; and I have been familiar with Coney Island people through my connections of business during that period.

Q. You made this canvass of voters in December, after the election? A. Yes, sir.

Q. Then, if there were more votes cast in any of these districts than what you have estimated to be the legal voters, do you think that all those over and above the number you have stated were illegally cast? A. No.

Q. There might have been a great deal more cast in these districts legally than you have estimated? A. My canvass was an estimate; it was not a count.

Q. No reliance can be placed on it, can there? A. Why, yes; the same reliance that can be placed on an estimate of anything, an estimate for building, construction or anything else.

Q. Did you call at the houses of the residents of Gravesend? A. I canvassed all the houses of Gravesend, and can verify them and locate each one of them.

Q. You canvassed every house in Gravesend? A. I personally inspected every house in the town of Gravesend and took an estimate afterwards; after this report was made out.

Q. Then, if you have canvassed every house, why cannot you give an absolute number of voters? A. Well, I could not tell exactly how many were legally entitled to vote, and how many were foreigners — how many were legal voters.

Q. You did not make any such inquiry? A. Well, that inquiry would not be correct, anyway.

Q. Why? A. You would have to take the persons' statement; I would not swear that they would tell the truth.

Q. What did you take? A. I took my estimate, the same as any man would make an estimate.

Q. What do you call your estimate; what do you consider a legal voter? A. No; we counted up the people and figured from the number of people how many should be legal voters.

Q. You were the judge of whether they were legally entitled to vote or not? A. No; I could not tell that; I would have to swear them all.

Redirect-examination by Mr. Kiendl:

Q. You were in town during this last election, were you not, and knew of the voting in the town at the last election? A. I was not at the polling place last election day.

Q. Do you know how many votes were cast in the town at the last town election?

Mr. Curran — I object.

A. I have not the figures.

The Chairman — I want to ask you a question; you say you

visited each house in Gravesend? A. Yes; I measured each one of them; but that was after this list was prepared.

Q. What did you do when you visited the houses? A. I made a canvass of the houses, the residential houses, and the number of rooms in them, as near as we could estimate them.

Q. How did you ascertain the number of rooms? A. Every one that was open we went in and examined; that were closed, of course, we could not get in.

Q. Did you inquire of any one at each of these houses how many people resided in it? A. Yes, sir.

Q. And whether they were males or females? A. Yes, we tried to get them as near as we could, but that was subsequent to this report, that was in a report with the number of houses that I made for the Committee of Twenty-five.

Q. Your estimate, now, which you gave us, of the number of local voters, takes into consideration, does it not, the inquiries which you made when you made this personal inspection of the houses? A. Certainly.

Q. And the information which you obtained in that way? A. Yes, sir.

Recross-examination by Mr. Curran:

Q. You called at hotels also? A. Yes, sir.

Q. And took the number of employes of hotels? A. What were there; yes, sir.

Q. What were there only? A. Yes, sir.

Q. Upon that day? A. Yes, that's right.

Q. You would not like to swear that there were not over 2,000 legal voters in the town of Gravesend? A. No; I would not want to do that without a thorough canvass.

Q. You do not consider this a thorough canvass at all? A. No; it is an estimate — a pretty fair one; I am not ashamed of it.

William Deterling, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Where do you reside? A. In the city of Brooklyn; 390 Sheffield avenue.

Q. What is your business? A. I am an accountant.

Q. Did you make a comparison of the registry list of the town of Gravesend at the last election on November 7, 1893; of the registry and poll-lists? A. Yes, sir.

Q. Have you the comparison with you that you made? A. I have.

Mr. Curran — I object to that as immaterial, irrelevant, and on the further ground that this man is a principal in this contest, and cannot give an unbiased opinion.

The Chairman — The objection is overruled.

Mr. Kiendl — Have you such a comparison in your hand? A. I have; yes, sir.

Mr. Kiendl — I now offer in evidence the comparison made by Mr. Deterling.

Mr. Curran — I object to it; he has not proved that it is the comparison.

The Chairman — He swears that this paper is a comparison.

Mr. Curran — I understood him to say that he made a comparison.

The Chairman — I understood him to say that this is the comparison.

A. This is my work; the result of my canvass.

Mr. Kiendl — And you made such a canvass when? A. I commenced to make it about the fifteenth or eighteenth of November, and concluded my task about the twenty-ninth of January last.

Q. Did you give testimony of such comparison before the Senate committee? A. I did.

Mr. Curran — I object.

The Chairman — I do not think that is material.

Mr. Kiendl — I offer in evidence the comparison.

Mr. Curran — I object to it on the ground that it was made subsequent to election.

The Chairman — What do you mean by making a canvass; state what you did? A. Not a canvass, a comparison; I compared the poll-list with the registry list; I went over the registry lists at least about six thousand times; I compared each name on the poll-list to see whether the party was entitled to vote, and by looking at the registry and finding the name, such statement as you find here embodied.

Q. What does that statement purport to show, what results does that comparison you have, purport to show? A. It purports to show that men voted who were not entitled to vote, the name not appearing on the registry.



Q. Does it show the names of people who voted and whose names were not upon the registry list? A. Yes, sir.

Q. As a result of this comparison? A. Yes, sir.

Q. Anything else? A. It shows the manner of voting in Gravesend — how they voted down there.

Mr. Curran — Were you present? A. No, sir.

The Chairman — What do you mean by that? A. Well, for instance, take the letter “E” on the poll-list; you will find there — I will look at my memorandum — that there was not a vote recorded between ballot 812 and ballot 1402; in other words, in 600 voters, there was not one man of the initial “E.”

Q. It purports to show, then, that there were a large number of ballots that were never returned or accounted for? A. Yes; no such entries made upon the registry lists.

Q. Does it purport to show any other facts? A. Yes, sir; it purports to show that under certain initials of the alphabet, for instance, under “I,” there were ten persons registered, all the ten voted; under “J” there were forty registered, and all the forty voted; “Q” there were ten names registered —

Mr. Curran — I object to this. The stenographer is taking it down.

The Chairman — That’s right.

The Witness — Under “Q” there were ten men registered, and nine voted; under “T” there were forty-seven registered and they all voted; all the forty-seven.

The Chairman — What other class of facts? A. That is not all, Mr. Chairman.

Mr. Kiendl — That is enough to enable the committee to judge of the class of facts; what other class of facts does this purport to show? Take the first statement there — the persons who voted illegally, and their names not appearing on the registry list.

The Chairman — He has already stated that. It shows the fact that there were people who voted whose names appear upon the poll-list, but who were not registered, giving the names.

Q. What other class of facts? A. I can show that ballots were voted twice and thrice, and I have the numbers of the ballots.

Q. How many ballots —

Mr. Curran — I object to that.

The Chairman — We will not go into that. Is there any other class of facts? A. Yes, sir; it shows that the voting was done in alphabetical order in a great many instances, following the letters

of the alphabet — N, O, P, Q, R, S, T, U, V — the voting went in that way, four and five in a group together.

Q. What other class of facts, if any? A. Then I have the names of persons that appear twice in the poll-list; also those that appear three times in the poll-list.

Q. What other class of facts, if any? A. Also numbers of ballots that did not appear at all in the poll-list.

Q. Anything else? A. Then I have made a statement, here, as I said before, where intervals happened between certain letters of the alphabet.

Q. You have mentioned that; what else? A. I have mentioned that, yes, sir; then I show that persons voted just the same as they appear upon the register list.

Q. That is, in the same order in which they appear upon the registry list? A. In the same order in which they appear on the registry list.

Q. What other class of facts? A. That no numbers were entered upon the registry list opposite the voters' names.

Q. Numbers of tickets? A. Numbers of ballots.

Q. Any other class of facts? A. That is about all, I think.

Q. All of these facts you derived from a comparison of the poll-list with the registry list? A. Yes, sir.

The Chairman — The committee will receive the paper and overrule the objection.

Mr. Kiendl — It also shows, I believe, the fact that they voted according to alphabetical order? A. I have said that.

Mr. Crosby — You have not shown that the statements appearing in this paper were all correct from the result of that examination.

Mr. Kiendl — You have personally examined all the statements which appear in this paper, have you not? A. Yes, sir.

Q. And they are correct statements of the facts found from your personal examination of the registry lists and poll-lists? A. Yes, sir.

Mr. Kiendl — I offer it in evidence.

Received in evidence and marked "Exhibit T 3."

Q. Have you made a comparison of the poll-lists and register list of the fifth, eighth and ninth election districts of the town of Castleton? A. I made a thorough examination of the eighth and ninth districts, and just a slight examination of the fifth district.

Q. And that was made from the poll and registry lists of those districts? A. Yes, sir.

Q. When was it made? A. It was made last week.

Q. Have you the result of that comparison? A. Yes, sir.

Q. What did you find as the result of that comparison? A. I found that the registry list —

Mr. Curran — I object to that.

Mr. Kiendl — I simply do this to show what he did; it has the same class as the other.

The Chairman — Does this paper contain the results of this comparison? A. Yes, sir.

Q. Does it purport to show the same class of facts that the other paper did? A. In most cases it does.

Mr. Kiendl — I offer it in evidence.

Mr. Curran — I object.

The Chairman — It is received, subject to the objections.

Marked "Exhibit G 3."

The Witness — My examination is principally taken from the original lists.

Q. Now, Mr. Deterling, were you present at the canvass of the vote for delegates to the Constitutional Convention in the Sixth Senatorial District? A. I was present at the canvass of the votes canvassed by the board of supervisors.

Q. Will you please state what the result of that canvass was; what votes were cast for each delegate that was in nomination on the Republican and Democratic tickets?

Mr. Curran — I object to that. Let them produce the proper original.

The Chairman — You have got the record here, have you not?

Mr. Kiendl — I have not got the State record.

Mr. Crosby — You have a duplicate in the clerk's office of the certificate of the State canvassers?

Mr. Kiendl — Yes; there is no doubt about it, for they served papers themselves, in which they got an order to show cause. There is no doubt about it.

Mr. Curran — We can produce the certificate of the Secretary of State.

The Chairman — Can you gentlemen agree upon what that canvass showed?

Mr. Curran — The total canvass, yes; according to the statement of the Secretary of State.

Mr. Kiendl — Then, if this fact is taken on the record to this effect — that the counsel for the contestees will admit the vote given for the delegates of the Sixth Senatorial District to the Constitutional Convention, as shown by the certificate of the Secretary of State, is the vote of delegates of the Sixth Senatorial District. Let Mr. Deterling make that statement, and, if it does not agree with the certificate, it may be amended.

The Chairman — I do not like to take it in that way.

Mr. Kiendl — At a later date I will offer the certificate of the Secretary of State.

The Chairman — We will receive that when it is offered. It may be considered as being offered now, and the certificate itself may be introduced at your convenience.

Cross-examination by Mr. Curran:

Q. How long were you engaged in the comparison of the poll-lists and registry lists of the town of Gravesend? A. From about November fifteenth until about January twenty-ninth, as I said before.

Q. You went over the registry lists from A to Z, I suppose? A. Yes, sir; also the poll-lists.

Q. How long would it take you to go over the original lists at one time, that is, for the purpose of comparison? A. That is a hard question to answer.

Q. Would it take you an hour? A. It would take more than that; do you mean from A to Z?

Q. Yes. A. I did not do it that way.

Q. How did you do it? A. Each letter of the alphabet separately; first take up A, then B, then C, etc.

Q. How long did it take you for each letter on an average? A. It depends on the number of voters registered on each letter.

Q. You are an accountant? A. Yes, sir.

Q. You can average pretty well; would it take ten minutes? A. Longer than that.

Q. An hour? A. I do not know exactly that it would take an hour.

Q. How many hours a day did you work at that comparing? A. I sometimes worked until midnight.

Q. From what time in the morning? A. About nine o'clock.

Q. Every day? A. Yes, every day.

Q. Were you not in Albany between that time? A. No, sir; only January first; that was a legal holiday.

Q. You were not, prior to January fifteenth, in Albany? A. January first, I say.

Q. Any other day? A. Not until January thirtieth, after that.

Q. You have testified that you went over these lists six thousand times? A. Yes, sir.

Q. How many hours is that? A. I could not tell you.

Q. Do you think you worked six thousand hours between November fifteenth and January fifteenth? A. No, sir; I do not.

Q. Then, when you testified you went over this six thousand times, you did not tell the truth, did you? A. I guess I did.

Q. You went over them six thousand times? A. I did; yes, sir; I had to in order to make an exact examination.

Q. And it took between ten minutes and an hour for each name? A. I did not say it took me an hour for each name; I told you I could not tell exactly; it is impossible to tell that; one name I might tell in just a second, and another in an hour — I could not tell.

Q. You have handled the original names, the original books, six thousand times? A. No, sir.

Q. What do you mean by going over it; don't you mean handling it? A. I handled the certified copy of the registry lists six thousand times.

Q. You testified on direct-examination that you had an original? A. I had at first; but I had to give them up.

Q. How long did you have the originals? A. About a couple of days.

Charles Foster, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Foster, where do you reside? A. In New York city.

Q. What street? A. 145 Sixth avenue.

Q. Have you been at Gravesend, Coney Island? A. Yes, sir; I have been at Coney Island.

Q. Were you at Gravesend last July or August? A. I was at Coney Island; I was employed there in the St. Nicholas Hotel.

Q. What were you doing; what was your employment there? A. I was tending bar there.

Q. Do you remember any one coming there to register, people at the hotel, or at the saloon where you were?

Mr. Curran — I object.

Mr. Kiendl — I want to show the manner of registering voters at Coney Island.

The Chairman — We will take the fact; let him state what occurred.

Mr. Kiendl — What happened at that time? A. Well, in the latter part of August, there were two policemen came around there; it was at the hotel, but there was a dining-room and a bar attached to each end of the hotel, and we were all called out, and what people, what customers sat in there, in that part of the house, the most of the waiters, the traveling population, to come in, waiters, cooks, dish-washers and general floating population, they were all called in, which included the rest of them, the names were taken down to vote down there.

Mr. Curran — I object to this last, unless they prove that this was the list that was used upon that occasion. We ought not to be bound by anything done in July by two policemen, unless they can connect this list that they claim was made in July with the official registry list, as used in November.

The Chairman — That is only a matter of argument upon the testimony when it is in. We will admit the proof.

Mr. Curran — I object to it, unless the counsel will state that he is going to connect it.

The Chairman — We will take your objection upon that ground, and, unless it is corrected, we will entertain a motion to strike out the evidence.

The Witness — It was not only there — they were called in from the concert gardens.

The Chairman — State just what happened at that time.

Mr. Kiendl — You say they called them in from the concert garden, too? A. Any one that happened to be in there; they were just as welcome as any one else.

Q. What was said by these men that took the names; what did they say? A. All they wanted you to do was to register, giving your name and age, just the same as you would register in the city of New York or Brooklyn.

Q. Do you know whether they went to any other place, after they had taken the names in your place? A. Yes, sir.

Q. Where did they go after that?

Mr. Curran — I object.

The Chairman — The witness may state what he knows about what these policemen did upon this occasion.

A. They would go from one place to another; I saw them in several places; the same people, and saw them registering different persons.

Mr. Kiendl — You say they had a book? A. Yes, sir.

Q. Did that book have a place for names?

Mr. Curran — I object, on the ground that they should produce the book.

The Witness — Well, they took our names and our ages and our addresses.

Q. Now, some of those people who were registered at that time, how long had they been in the hotel?

Mr. Curran — I object to it, on the ground that there is no proof of any registry at all.

The Chairman — The committee will not assume that this was a registry list. The men whose names were entered in the book, the question doubtless should be.

Mr. Kiendl — How long had some of those persons that had their names entered upon the so-called registry list been in the hotel or saloons, where you were?

Mr. Mullen — I object to that also.

The Chairman — Objection overruled.

A. They might have been ten minutes, and they might have been a week; it was a floating population.

Q. They took all the names that were there, whether they had been there a week, or ten days, or two weeks? A. Yes, sir.

Q. Was your name taken down? A. Yes, sir.

Q. Did you vote at Gravesend? A. No, sir.

Q. You voted in New York? A. I voted in New York, from 145 Sixth avenue.

Q. Do you know whether your name is on the registry list of the town of Gravesend, second district?

Mr. Curran — I object. The registry list will show it.

Mr. Kiendl — I will withdraw the question.

Cross-examination by Mr. Curran:

Q. How many names did those men presume to take that day? A. I could not tell you; they were too numerous for me to mention.

Q. You saw them take each and every one? A. No, sir; I did not; I had to go back and attend to business.

Q. You were tending bar upon that day? A. Yes, sir.

Q. Attending to your business? A. Yes, sir.

Q. After they left the place did you follow them? A. No, I went back and attended to my business.

Q. Did you see them go to any other place? A. At different times I did, on different days; there was no particular hurry about getting through.

The Chairman — You just answer the questions that are asked you.

Q. You did not follow them that day? A. No, sir.

Q. When you said that you saw them in different places, you did not mean that day? A. Not that day, no, sir.

Q. Did you have any special object in watching where they went? A. No, sir; none whatever.

Q. How long after that did you remain in the employ of this hotel? A. I said I remained there until the close of the season; I suppose it may have been some time about the first of September.

Q. Were you employed by the day or night there? A. Well, I would open up in the morning at any time I liked; sometimes I would stay on later nights.

Q. Mostly at work every day? A. Well, no; not in the forenoon; mostly in the afternoon and night.

Q. While you were disengaged, were you in the habit of visiting other hotels in the town? A. I used to take a walk around that way — the same as any one would do.

Q. To visit other hotels? A. Yes, sometimes.

Q. And it was on one of these visits, or on these visits, that you saw these men taking names in other hotels? A. I did; I happened to be in a place at one time, and they came in there.

Q. Is that all? A. That is one; I know that; I am positive of.

Q. Were there any other places that you saw them taking names? A. Well, I could say one, but would not mention any more.

Q. Where was that one place? A. It was in the Glasco House; I was up there and saw the same pair one day.

Q. When was that? A. It was a day or two after I registered, I think; it might be the day that I registered.

Q. Then you did register, did you? A. Well, they took my name, at least; I suppose I registered.

Q. Did you know that was a crime? A. I did not know it at that time; if it had been likely I would have voted there.

Q. You know it now, do you not? A. I did not vote there.

Mr. Kiendl — I have received another communication that those two witnesses on Staten Island are again subpoenaed in the Court



of Oyer and Terminer, at Richmond, to appear before Judge Cullen. It seems that these indictments in Richmond county are being tried.

Recess until two o'clock.

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#### AFTERNOON PROCEEDINGS.

Same appearance as the morning session.

Mr. James W. Glendinning, for contestees.

Charles S. Voorhies, being duly sworn for contestants, testified as follows:

By. Mr. Kiendl:

Q. Mr. Voorhies, where do you reside? A. Gravesend.

Q. How long have you resided in the town of Gravesend? A. All my life.

Q. How old are you? A. Thirty years.

Q. Were you a resident of the town of Gravesend in the last year past? A. I have always been a resident of the town.

Q. Are you acquainted with the voting population of the town of Gravesend? A. I am.

Q. Have you made a canvass of the voting population of the town of Gravesend? A. I made a canvass of the voting population of the town of Gravesend for the Committee of Twenty-five; I forget what date it was.

Q. When was that made? A. I do not remember the date; it was not long ago, just before the McKane trial.

Q. How was that canvass of the voting population of the town of Gravesend made? A. That was made by taking the registry and poll lists, and I myself, with other gentlemen of the town, living there, selecting the names that we knew, and checking them off; I also went to one or two of the storekeepers and the postmaster, and obtained all the people that he knew, and checked them off; from that canvass I inferred that there were 1,734 voters in the town.

Q. Did you make an estimate of the canvass of the local voters of the first district of the town of Gravesend? A. I did.

Q. How many legal voters did you estimate there were in the first election district in the town of Gravesend?

Mr. Curran — I object to the testimony, on the ground that it is not the way in which the canvass should be made. That he has not proven himself competent.

The Chairman — He has shown some effort to ascertain that, and we will take the testimony.

A. I know everybody down there, with the exception of those that live in the Bowery.

Mr. Kiendl — What is your answer to the question? A. I do not remember the figures I made now.

Q. What is your best recollection? A. I do not remember them; it is so long ago since I made them; I could not even approximate them.

Q. Can you refresh your recollection by examining the record of your testimony (testimony shown witness)?

Mr. Curran — He has already testified that he cannot tell.

The Chairman — If he can refresh his memory by any means we will permit him to do it.

A. The first election district, as I have already sworn to on a former occasion, that I knew 201 out of 287 legal voters.

Q. The second election district? A. 487, 300.

Mr. Curran — I object to his reading from a paper.

The Chairman — Are you able to speak from memory, without looking at that?

A. Yes, I can, if I see the districts; I remember approximately; they must be the districts of which I am telling.

Q. Now the fourth district? A. 383 voters.

Q. The fifth district? A. 160.

Q. The sixth district? A. 211.

Q. You were at the election polling place on election day, were you not? A. Yes, sir.

Q. How long a time were you there? A. I went there about five minutes to eight, and left there on the train that left there at 8:05.

Q. Was there a line of voters outside of the second election district at the time you were there?

Mr. Curran — I object to that.

The Chairman — The objection is overruled.

A. There was no line in any of the districts at the time I was there.

Cross-examination by Mr. Curran:

Q. You say there was no line at the polling places — do you mean by that that there was not a long line? A. There was nobody

at all standing by any of them, except the officers and a few outsiders standing around, like they generally do at the polling place.

Q. There were a number around in the neighborhood, were there not? A. No, sir; there was not fifty people there when I was there.

Q. You say you went there at what time? A. Five minutes to eight; I voted and left on the 8:05 train.

Q. Then you were only there a minute or two? A. I went in the polling place five minutes to eight, and I came out and took the 8:05 train.

James N. Brewster, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Where do you reside, Mr. Brewster? A. West Second street, Coney Island.

Q. How long have you resided there? A. Between twelve and thirteen years.

Q. What election district is that in? A. The second election district.

Q. Are you familiar with the voting population of the town of Gravesend, that is, of the second election district of that town?

A. Well, I think I am; as much so as any resident of the town.

Q. You are pretty well acquainted with all the people there, are you not? A. I am with most of them.

Q. What, in your opinion, is the voting population of the second district of the town of Gravesend?

Mr. Curran — I object to that.

The Chairman — The objection is overruled.

A. Not to exceed five hundred.

Q. Were you at the last general election held in the town?  
A. Yes, sir.

Q. Was that a hotly-contested election? A. The last one was; yes, sir.

Q. The spring election? A. Yes, sir; the spring election.

Q. How did that compare, as regards the excitement, with previous years?

Mr. Curran — That is objected to, as having nothing to do with legal or illegal voting.

The Chairman — The objection is overruled.

Q. What effort was made to get out a full vote in the town of Gravesend, second district, as compared with other years?

Mr. Curran — That is objected to.

Objection overruled, and exception taken by Mr. Curran.

Mr. Glendinning — It has not been shown what effort, if any, this man has made. It has not been shown that he has made any effort at all.

The Chairman — We will let him say if there was any effort, and if so, what effort, and compare it with other years, if he knows. A. There has been excitement probably every year and every election.

Q. Last year — this last spring election? A. There was quite as much excitement as usual.

Q. What effort was there made to bring out all the vote there was in that town, do you know?

Objected to by Mr. Glendinning.

Objection overruled.

A. As far as the second district was concerned, I think every effort was made to bring out every voter there was in the district.

Q. Do you know the vote that was cast at the last spring election in the second election district? A. Something over four hundred.

Objected to by Mr. Glendinning.

The Chairman — The question is, do you know what it was? A. I do not know to a vote, but something over four hundred.

Q. Can you give an idea of what the vote was?

Objected to by Mr. Glendinning.

The Chairman — We will sustain the objection. The witness has stated that he does not know. You had better prove it in some other way.

Q. Do you know whether or not the vote exceeded five hundred? A. It did not.

Mr. Glendinning objected to the question and moved to strike out the answer.

Motion to strike out denied, and exception taken by Mr. Glendinning.

Q. Do you know the number of your vote in November, 1893? A. 1,223.

Objected to by Mr. Glendinning as not responsive.

The Chairman — He does not ask you what it was; he asks you if you knew.

A. Yes, sir; I know.

Q. What was it? A. 1,223.

Q. Do you know what your vote was in the spring of 1894? A. Yes, sir.

Q. What was it? A. 213.

Q. Do you know what time you voted at the November election in 1893? A. Yes, sir; I know.

Q. State it, if you please? A. About three o'clock in the afternoon.

Q. What time did you vote at the spring election in 1894? A. Between one and two o'clock.

Cross-examination by Mr. Glendinning:

Q. Are you a member of any political organization in the town?

A. I was a member of the Citizens' League.

Q. Are you a member now of any? A. No, sir.

Q. Have you been a member of any political organization? A. Not until I was a member of the Citizens' League.

Q. When was that? A. This spring election.

Q. What time did you joint it? A. A few weeks before election.

Q. Prior to that time, did you ever belong to any political organization in the town? A. No, sir.

Q. How long do you say, you have lived there? A. Between twelve and thirteen years.

Q. Why did you not join a political organization prior to that?

Objected to by Mr. Kiendl as immaterial.

Objection overruled.

A. I was alluding to the ward organization; I was a member of the Republican organization.

Q. For how long? A. About six years.

Q. Did you ever hold an office in the town? A. Yes, sir.

Q. What office? A. Trustee of the fire department.

Q. How long was that ago? A. Six years ago.

Q. And since then have you held any position? A. I held that about four years, commencing six years ago.

Q. Now, you have never taken any active interest in politics in the town until last fall, have you? A. Yes, sir; somewhat of an active interest.

Q. What kind of an active interest? A. Well, I have belonged to the Citizens' League.

Q. I mean prior to joining the Citizens' League? A. No; nothing of any consequence.

Q. No interest whatever? A. Yes, a little interest, but not much.

A. B. Hodges, recalled for the contestants, testified as follows:

By Mr. Kiendl — Mr. Hodges, have you made up the statements that the committee desired that you should make up, eliminating from the former statement the objectionable parts?

The Chairman — Let him state what kind of a statement he has made up.

A. These statements that appear before me are in my handwriting, and I made them.

Q. What is the first one? A. The summary of the poll-list in the ninth district of the town of Castleton, 1893 election, in November.

Q. Is that taken from the poll-list? A. It is taken from a certified copy of the poll-list, furnished me, and made up from the records of the institution.

Q. What does that contain?

Mr. Glendinning — I object to the testimony. He says it is taken from a certified copy. There is no proof that he knows it was a certified copy.

The Chairman — Mr. Hodges, was that made up from the books that were presented and introduced in evidence the other day? A. Yes, sir.

The Chairman — Go on.

A. It shows that in the ninth district there were 247 names on the poll-lists, made up as follows: Class 1, voters outside of the Harbor, not residents of the Harbor, 29; Class 2, in the Harbor, not inmates, officers and employes, 15; Class 3, in the Harbor, inmates, 129; total, 173; Class 4, votes credited to inmates who did not vote, 42; Class 5, votes credited to inmates who are dead, absent or at asylums, 10; Class 6, votes credited to names unknown and not on the record, 21; Class 7, names, but no ballot number, recorded "No vote," "Ballot destroyed," 1; total, 74; making in all, 247.

Mr. Kiendl — I offer that in evidence.

Mr. Glendinning — It is objected to.

Received and marked Exhibit "H, 3."

Q. What is the next statement you have? A. A summary of the poll-list of the eighth district of the town of Castleton; total number on the poll-list, 191, made up as follows:

The Chairman — I do not think it necessary that you should read the details.

The Witness — This is a summary of the poll-list of the eighth district of the town of Castleton, made up from the records of the institution, the Sailors' Snug Harbor, and from statements made by the inmates to us, as to whether they did or did not vote.

The Chairman — We cannot receive that.

The Witness — It also shows votes credited to inmates absent and who are not known to us, whose names do not appear upon the record.

Mr. Kiendl — There is nothing objectionable about it, except the statement of those that did not vote. I will offer it in evidence, except that part, and that part we will strike out.

The Chairman — Strike that out, and then it may be received.

The Witness — This is a list of names of persons appearing on the poll-list of the eighth and ninth districts of the town of Castleton, as voters in the election held November 7, 1893, and as residents of the Sailors' Snug Harbor, who are unknown.

Offered in evidence by contestants' counsel; objected to by Mr. Glendinning.

Received and marked "Exhibit I, 3."

Q. What is the next statement you hold? A. This is a list of names of Sailors' Snug Harbor that appear on the poll-list of the eighth and ninth districts of the town of Castleton as voters in the election held November 7, 1893, who are dead, absent or at asylums.

Offered in evidence by contestants' counsel; objected to by Mr. Glendinning.

Objection overruled.

Received in evidence and marked "Exhibit K, 3."

Q. What is the next? A. That is a list of inmates of Sailors' Snug Harbor, that appear on the poll-lists of the eighth and ninth districts of the town of Castleton, as voters, and who are not registered.

Offered in evidence by contestants' counsel; objected to by Mr. Glendinning.

Received in evidence and marked "Exhibit L, 3."

Q. Who were the inspectors of election in the ninth election district? A. I do not know their initials; Hewitt, Blatchford and Love.

- Q. John T. Blatchford? A. That is correct.  
 Q. James H. Hewitt? A. That is correct.  
 Q. Alexander Love? A. That is correct.  
 Q. Is Alexander Love alive or dead? A. He is dead; I cannot tell you the date of his death.  
 Q. In the eighth election district who were the inspectors of election? A. I cannot recall their names.  
 Q. James T. Meyers? A. I remember him.  
 Q. Augustus White? A. Augustus White was one.  
 Q. Samuel A. Stagg? A. He was the other; I remember their names after they are called.  
 Q. Will you tell me what election district building C is in?

The Chairman — On page 181 of the minutes is the following statement: "Buildings C, D, E, F and G are in the eighth district, and the others are in the ninth."

- A. That is correct.  
 Mr. Kiendl — That is correct.  
 A. That is correct.  
 Q. Has Mr. Bunker returned to the institution? A. He has not.  
 Q. Do you know of your own knowledge whether there has been any effort to serve him with the subpoena at the Harbor? A. I know there was a subpoena served, or rather a man called at the office and inquired for Mr. Bunker and wanted to serve a subpoena, and I told him he had gone to sea.  
 Q. He has not returned since? A. He has not returned since.  
 Q. When was the first process served on Mr. Deterling? A. I do not remember the date.  
 Q. When did Mr. Bunker go away? A. I think I can tell you (witness refers to a book); he went away about three weeks ago; I do not remember the date.

Cross-examination by Mr. Glendinning:

- Q. You have got here the total number of votes, 191, on the poll-list? A. Yes, sir.  
 Q. Class 1, voters outside of the Harbor, not S. S. H., that means Sailors' Snug Harbor? A. Yes, sir.  
 Q. Forty-eight? A. Forty-eight.  
 Q. What do you mean by that? A. That means the residents on the Island, who have no connection with the institution, but live in the vicinity, and in the same election district; they are not



inmates or officers, and were there outside of the Harbor, but in the same election district.

Q. You do not mean to have the committee understand that that forty-eight were names of voters, of people, that did not vote? A. No; they all voted, and are on the poll-list as voting, but not residents of Sailors' Snug Harbor.

Herman W. Cropsey, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Where do you reside? A. Gravesend Beach.

Q. How long have you resided at Gravesend? A. I have resided there most of my life; I did not reside there continually, but most of my life I have resided there.

Q. How many years? A. About twenty-five years, I suppose.

Q. Are you in active business in the town of Gravesend? A. Yes, sir.

Q. What is your business? A. I am a lumber dealer.

Q. Are you acquainted with the residents and inhabitants, the voting population of the town of Gravesend? A. Of the whole town?

Q. Yes? A. Well, pretty well acquainted with them, but I would not say positively.

Q. In what election district do you reside? A. In No. 1 it was, at that time.

Q. Have you made a canvass of the voting population in your district — you are in the first district? A. Yes; I made a canvass of it last fall.

Q. What is, in your opinion, from that canvass, and from your knowledge of the people in the town there, the voting population of the first district of the town of Gravesend in October or November, 1893?

Mr. Glendinning — That is objected to. Suppose he did make a canvass. We do not know what kind of a canvass he made.

Objection overruled, and exception by Mr. Glendinning.

A. In district number one, three hundred votes, about, or somewhere in that vicinity.

Q. What in your opinion, from your own knowledge of the town, is the voting population of the whole town?

Mr. Glendinning — That is objected to.

The Chairman — The objection is overruled.

A. Well, I figured it at about 1,700 last fall; do you mean the voting cast?

Q. The voting population? A. The voting population, I should estimate that at about two thousand; nineteen hundred to two thousand.

Q. Did you vote at the election held in November, 1893? A. I did; yes, sir.

Q. Were you at the polling place during election day, November, 1893? A. Yes, sir.

Q. How long a time were you at the polling place? A. I should think I was there about an hour.

Q. During the time that you were at the polling place, did you see any line of voters extending out of the door, from either or any of the polling places? A. No, sir.

Q. Were you present at the last election, held in the spring of 1894? A. Yes, sir.

Q. Was there any great excitement, or was it a hotly contested election?

Mr. Glendinning — That is objected to as leading.

Objection overruled.

A. At the last spring election do you mean?

Q. The spring of '94? A. I do not know what you mean by hotly contested; there was a contest, of course, between the two factions.

Q. Was there considerable excitement? A. Not while I was at the polls; I did not see any excitement.

Q. Was there a large effort made to bring out the entire vote of the town?

Mr. Glendinning — I object to the style of examining; that he should ask what took place there.

The Chairman — I think I will allow him to ask this question. It is the same question that has been asked repeatedly of the different witnesses who have been produced.

A. Yes, sir.

Q. Do you know the vote at the spring election in the first district? A. No; not to state it correctly.

Q. Can you give about the number of votes cast in the first election district of the town of Gravesend?

Mr. Glendinning — That is objected to; it calls for a guess.

The Chairman — He asks him if he can state it approximately, and he may answer it if he can.

A. As nearly as I can recollect —

The Chairman — Can you tell approximately? He does not ask you to tell, but he asks you whether you are able to make an approximate statement. A. Well, I am able to make an approximate statement.

Mr. Kiendl — What is that approximate statement? A. Somewhere about 275 votes.

Q. Can you give us an approximate estimate of the number of votes cast in the second election district at the last election held in 1894? A. No, I cannot; I do not recollect anything about that now.

Cross-examination by Mr. Glendinning:

Q. What election district do you reside in? A. I reside in district No. 1; it has been changed since then.

Q. What district was that at that time? A. Number one.

Q. Is that the district you say you canvassed? A. Yes, sir.

Q. You did not canvass the town, did you, only your district? A. Well, only my district; that is, a close canvass only on my district.

Q. From your canvass of the district, how many voters do you say you calculate were in that district? A. Little below 300.

Q. Will you state how you canvassed the district? A. We, there were several parties that made the canvass, of course —

Q. I want to know what you did? A. Well, I went over the immediate vicinity where I live, and made a thorough canvass of that.

Q. You say a thorough canvass. I want to know what you did to ascertain the number of votes in that district? A. From my knowledge of the residents, I knew very nearly everybody that lived in each house; who lived there, and in that way I made the canvass.

Q. Is that the way that you came to the conclusion that there was that number of voters in the district? A. Yes, sir.

Q. That is all you did to ascertain that fact? A. Well, I say I had others.

Q. I don't want that. A. Of my own personal work that was all I did personally, except to get others to do the same thing in other districts.

John W. Pierce, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Where do you reside? A. Corner of Livingston street and Boulevard avenue, Coney Island.

Q. In what district? A. Second election district, as it was then known.

Q. How long have you resided in that election district? A. Nine or ten years, probably.

Q. Are you familiar with the voters in that election district? A. Pretty fairly well.

Q. From your knowledge of the voters in that election district, what, in your opinion, is the number of the legal voters in that district?

Mr. Glendinning — That is objected to, on several grounds.

The Chairman — State them.

Mr. Glendinning — One is "legal voters." He cannot decide upon a question of law whether the voters are legal or not, and he has not shown whether he is competent to testify whether a person is a legal voter or not.

The Chairman — Objection overruled.

A. In the neighborhood of 450 to 500 votes; not to exceed 500; 450, I should say.

Q. Were you a resident of that district, and did you vote at the election held in April, 1894? A. I did not vote in April, 1894; I was sick at that time.

Q. You lived in the town at that time? A. I lived there some thirteen or fourteen years.

Q. Was that election a hotly contested election? A. Yes, sir.

Q. Was any effort, or great effort, made, to bring out the total vote of the town?

Mr. Glendinning — I object to that.

The Chairman — The objection is overruled.

A. Yes; every effort was made.

Q. Do you know the vote cast in the second election district, and if so, state what it was at the spring election of 1894? A. No; not of my own knowledge.

Q. What knowledge have you of the vote cast?

Mr. Glendinning — I object to that.

The Chairman — Objection overruled.

A. Only the published statement, said to be an official canvass of the vote.

Q. What was that?

Mr. Glendinning — What he read in the newspapers.

The Chairman — What does the question call for, Mr. Kiendl? The witness says all the information he had in respect to it is what he saw in the newspapers.

Mr. Kiendl — Yes; I will withdraw the question.

Joseph Knapp, sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Where do you reside? A. In Brooklyn; Glenmore and Bedford streets.

Q. Did you make any effort, and if so, what effort, to serve a subpoena on Stephen G. Bunker? A. I went to Staten Island.

Q. What place on Staten Island? A. Sailors' Snug Harbor.

Q. Where did you go? A. I went to the governors' office, as they call it.

Q. Whom did you see? A. I saw Mr. Hodges there.

Q. What did Mr. Hodges say when you inquired for Mr. Bunker? A. He told me he was off on leave of absence for one month, to go south, or somewhere.

Q. When was it that you were there; how many days ago? A. I believe it was last Saturday; yes, last Saturday.

Mr. Deterling recalled:

Mr. Kiendl — Did you make an effort to serve a subpoena upon Stephen G. Bunker, and, if so, what effort did you make? A. Yes, I did; I called at the governors' office of the Snug Harbor institution, with a subpoena addressed to Stephen G. Bunker. I asked Mr. Cox, who was the assistant clerk at the institution, to please send Mr. Bunker to me at the office. He said: "I cannot comply with your request, because Mr. Bunker is on a thirty days' leave of absence." I asked him to refer to his books, when he would return, and he did so. He stated that Mr. Bunker left on the tenth of May on a sailing vessel, down south, on a pleasure trip, and was not due at the office until June tenth of this year.

Mr. Kiendl — Now, I offer in evidence the testimony of Mr. Bunker, taken in the Senate contest of Henry Wolfert against Hon. John McCarty, known as No. 21, on page 15, to and including the cross-examination of that gentleman on page 22.

Mr. Glendinning — That is objected to.

The Chairman — The committee intends to adjourn this hearing until the twelfth of June. Why not produce him upon that date?

Theodore Kiendl, duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Kiendl, you have made an account of the people who appeared to be recorded upon the census on file in the county clerk's office (book shown witness)?

Mr. Glendinning — That is objected to.

The Chairman — Was that census book received in evidence before? We had some discussion about it, my recollection is that it was not received.

The Witness — The book was testified to as being the original record, by the clerk of the court, Elijah Davis. He testified to this as being the original filed in his office.

Q. Have you counted the number of inhabitants, as recorded upon that book, of the town of Gravesend?

Mr. Glendinning — That is objected to.

A. I have.

Mr. Glendinning — Did Mr. Mullen question you in regard to this matter? A. No; I have not been on the stand. There was some discussion about it, and it was testified to by Mr. Davis that this came from the files of his office, and the testimony will show that.

The Chairman — I do not think that book is in evidence.

Mr. Kiendl — Mr. Kiendl, is that the book, that you now hold, that was produced by Mr. Davis from the office of the county clerk of this county?

Mr. Glendinning — That is objected to.

The Chairman — The objection is overruled.

A. It is.

Q. Have you totaled up the number of inhabitants, as recorded upon that book? A. I have.

Q. What is the total number of inhabitants, according to that book?

Objected to by Mr. Glendinning.

Objection overruled.

A. I have computed it at 8,418, one less than the number here in pencil.

Mr. Kiendl — I offer that in evidence, that census of 1892, of the town of Gravesend.

Mr. Glendinning — I object to it.

Mr. Kiendl — When was that filed? A. February 29, 1892. There is an enumerator for each district, and there is a sworn affidavit for each district.

Q. A similar certificate to this one? A. It seems to be; yes; it seems to be entirely on the same form.

The Chairman — The book is received in evidence.

Book marked "Exhibit M, 3."

The Chairman — Have you a computation as to the population by districts? A. I have not.

Alexander S. Bacon, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Mr. Bacon, where do you reside? A. Brooklyn.

Q. How long have you resided in Brooklyn? A. Eleven years.

Q. On November seventh last, were you in the town of Gravesend on election day? A. I was.

Q. What time in the morning did you go to Gravesend? A. I got there an hour before sunrise, about half-past five.

Q. Who was with you, at that time?

Mr. Glendinning — That is objected to.

The Chairman — The objection is overruled.

A. There were but two of our six carriages that got to Gravesend when I did and there were nine of us in those; the Rev. Dr. Kent, Mr. Doubleday, Mr. House, Mr. Rosenbeck, Mr. Steiber, I think his name is, Mr. Moore, Mr. Wardner — I cannot think of the other names now — the man that looks like Bob Ingersoll; Whiting, I think, his name is.

Q. Did you arrive at the town hall? A. Yes.

Q. What time was it when you arrived there? A. Half-past five in the morning; dark.

Q. Did you have any watchers' certificates with you?

Mr. Glendinning — That is objected to.

The Chairman — I think that is objectionable.

Q. What did you go to Gravesend for?

Mr. Glendinning — That is objected to.

The Chairman — Let the witness state what he did down there, and what took place.

A. I went down there to watch the election, if that is what you want.

Q. Yes; what did you do when you arrived there; what happened? A. I was in the leading carriage; there were five in it, one of the carriages having been sent back, just as we got to the outskirts of the village, because we had lost the others; I was the first to alight, and I found there a row of policemen surrounding our side of the carriage; we had stopped between the hotel and the town hall, in the Neck road, about half-way between the two, I should say; in front of the policemen was Mr. McKane, Supervisor and Chief of Police John Y. McKane. Behind these policemen was the crowd, the gang —

Mr. Glendinning — I object to that, and move to strike it out.

The Chairman — I think we will let the witness characterize the crowd.

The Witness — I immediately said something; Mr. McKane, how do you do, or good morning, or something of that sort; said I, Mr. McKane, these gentlemen —

Mr. Glendinning — If the committee please, I object, for this reason — unless it is going to show that there was fraudulent voting on election day, all of this testimony has nothing whatever to do with this contest, which took place between the witness and Mr. McKane, or what took place between the witness and the people that went down there in these carriages, and this gang that he refers to, has nothing whatever to do with this contest, and unless it is for the purpose of showing there was fraudulent voting there, it should not be admitted.

The Chairman — I suppose it will be claimed on the part of the contestants that it does, in some remote degree, have a bearing upon that question. We will overrule the objection and take the evidence.

The Witness — Said I, Mr. McKane, these gentlemen are watchers at this election, and we place ourselves under your protection. Mr. McKane said, Ah, yes, Mr. Bacon, we have been looking for you; we have been watching for you. He said, get out of this. I said, we do not get out, we are down here as election officers, and we intend to stay, and it is your duty to protect us. I said, besides that, we are here under the protec-



tion of an injunction from the Supreme Court. Ah, he said, injunctions don't go. We won't take your papers. I said, you will, whether you want to or not. He then turned to one side and said to the policeman, who was there with the crowd, hustle them off; rush them off. I was at the time, I suppose, just three or four feet from the carriage, not any more —

Mr. Glendinning — Of course, it is understood that this is all objected to.

The Chairman — Yes; this is all under your objection.

The Witness — Immediately three or four of the twenty or thirty policemen got hold of me, and began rushing me off, saying, "Outside of the limits; a hundred and fifty feet off." This, however, was an hour before sunrise. The most of the policemen kinder gave way and let in the crowd. Then, the next thirty seconds, I was knocked down, or pushed down, or got down some way, three times. When a man has got down on the bottom in a football game he knows he is there, but he does not know how he got there; and that was my condition. I was tumbled over the low platform there at Gravesend; I remember that; pushed over it by a policeman. At one time one of the toughs, a fellow dressed in very rough clothes, who looked like one of the fellows that sell sausages down there at Coney Island, struck me on the shoulder. I was, however, in the hands of two or three policemen, and it glanced off, and he went head over heels on to the track. After I had been rushed in this way, and led on to the railroad track, perhaps a hundred and fifty feet or more, Mr. McKane, who had followed up closely, says, "Arrest that man." Says I, "Do you order my arrest?" He said, "Yes." Said I, "All right." I was then taken by two or three policemen and put into a park van, and a great big, good-natured Irish policeman got in with me. Just outside some of the others of the party were standing. They had been brushed aside. I was the only one rushed off. They gobbled up three of them, and put them in — Mr. Moore, Mr. Wardner and Mr. Whiting. We were then driven down to Coney Island. After we had got about half-way down, finding that we were not killed, and no bones broken, we began to guy the policeman a little. I asked him his number. "Oh," he said, "you ought to be able to see that." Said I, "Well, I will see it as quick as it gets light enough. I will go for you, with all the rest." He said, "You are drunk, very drunk." I said, "My dear sir, you are away off. I am a total abstainer. I never drink at all." "Well, then," he said, "you must be damn

crazy to be down here at all." In view of the number of times you have had me before these committees, I am inclined to think he was right. I was then taken to the jail and locked up, or police headquarters, and my valuables were taken away, and in the usual way I was arraigned as a criminal. I told them I was born in the United States; I was forty years old; I was white, married, and all that sort of thing. I was put in a cell. I was taken upstairs. I was the baser criminal, I suppose, of the whole lot. I was kept there about an hour, when Mr. Rosenbeck came in. He looked as if he had been run through a threshing machine. His clothes were all torn off from him — his coat, and hat, and vest, and pantaloons, his shirt and his collar. He had got inside one of the booths and that was the last of him. After about another hour I was taken upstairs and arraigned before Judge Newton. I was then charged with disorderly conduct, in making a large noise and creating a riot and drawing a crowd. Said I, "Judge, I thought I was drunk and disorderly." "Oh," he said, "we know you too well for that." He wanted to know how I pleaded. I told him I did not plead; I would waive examination to appear before the grand jury. Said I, "You would find me guilty of murder or something else, if I was tried here;" and after some more talk he took my personal bond for \$100, and we waived examination. The same way with the other gentlemen. We got our breakfast and came home.

Q. You didn't stay to see the voting? A. No; I telephoned up to Mr. Gaynor's office to know what we should do, if we should go back there; they said no; the damage was already done, we had better come home; we waited about an hour, I think, at Coney Island for instructions.

Q. By whom were the watchers' certificates issued? A. By Mr. Buttling, the president or chairman of the Kings county general committee, and by Mr. Rae, the secretary.

Q. You were one of the watchers? A. I had not a watcher's certificate; no, I was not a watcher; eighteen persons had watchers' certificates, two to go inside, and one to be outside in each district; we had instructions to simply mark off each man that voted, just as you would mark bushels of corn put in a bin, and the man on the outside was to do the same work.

Q. Did you have an injunction? A. Yes, I had an injunction order; I did not have the bundle of papers; I asked for those, but before I could get hold of them I was rushed off.

Q. Were those papers taken from you when you were locked up? A. Well, I had nothing but a single order; I do not know

what became of them; I guess it was lost in the shuffle; that's my impression.

Cross-examination by Mr. Glendinning:

Q. Mr. Bacon, how many times have you told this story? A. Oh, half a dozen times; I know it by heart.

Q. And every time you tell it, you make it more humorous? A. Well, it could not be more humorous than it was for America, seeing this was not Russia.

Q. What time did you land down there? A. Half-past five.

Q. When were you taken away to the police station? A. I do not remember; I think it was about — it was not more than five or ten minutes.

Q. And it was before the time for the polls to open? A. Yes, sir; nearly half an hour.

Q. So that if there was any illegal voting on election day down there, you did not see it? A. No, I was not permitted to see any.

Redirect-examination by Mr. Kiendl:

Q. Mr. Bacon, this mob that was behind you, that you say the police opened to let them in — A. Yes, that's the way it seemed to me —

Q. Were they on the same grounds, or the limits, as they were called, as you were? A. There was no limits, except for electioneering, and we did not do any electioneering; they were on the same ground; there are no limits before the polls opened there, that I am aware of.

Mr. Kiendl — If it please the committee, that is all the evidence I have to offer to-day. There are really only two witnesses that I will call, with the exception of taking the testimony, if the committee desires, of some of the alleged election officers, who are serving terms in the penitentiary for participation in this celebrated Coney Island election; and, if the committee deem it proper, we will go there and take their testimony, if they will testify. If not, we may meet with a refusal, as we have in the past.

The Chairman — The committee are ready to go at any time.

Mr. Crosby — Mr. Chairman, I move that the committee adjourn to meet at this place to-morrow morning, at ten o'clock, and if there is any testimony here to be taken in the morning, we will take it, and if there is any testimony to be taken elsewhere, we will go elsewhere and take it.

Adjourned until to-morrow morning at ten o'clock.

## PROCEEDINGS.

CITY HALL, BROOKLYN,

FRIDAY, *June 1*, 1894 — 10 o'clock A. M.

Present — All the committee; Mr. Kiendl and Mr. Curran appearing for the parties.

Louis S. Philips, being duly sworn for the contestants, testified as follows:

By Mr. Kiendl:

Q. Where do you reside? A. No. 266 West 132d street, New York city.

Q. Are you an attorney-at-law? A. Yes, sir.

Q. On or about November first, between that and the seventh, or in the month of October, rather, did you attend at the election or polling place and registering place, in the town of Castleton, fifth election district? A. I did, sir; in the month of October, on the second day of registration, which, I think, was October 28.

Q. Who accompanied you there? A. Michael Horrigan, William F. Dwyer and Michael Hayes.

Q. What took place at that registering place?

Mr. Curran — I object to what took place, unless they show what authority this man had there.

The Chairman — We overrule the objection.

A. I went there with these gentlemen on the afternoon of October twenty-eighth, and saw the inspectors of election for that district.

Q. Will you give their names? A. Andrew Sheehan, Frank Fairlee and James McCarthy; I entered the place of registration, and Sheehan asked me what I wanted there; I told him I came to do some business with the inspectors; he wanted to know what my business was, and I told him that I had come there to examine the registry of electors, and I asked him to allow me to see it; he refused to show it to me, but after some parley he finally handed me the register; but before getting the original register, I asked him where was the register that was required to be posted in the polling place; I looked around for it and could not find it, and he said there had been none posted; that if they had posted one, it would have been stolen for a drink of beer, and finally he let me have his registry, and I began to look over it for names I had on a list, and I had barely commenced to examine it, when he snatched it from my hands, and said I could not look at it; I demanded then that he allow me to examine it, and he refused; I

turned then to the other two inspectors, who were seated at a table at the rear of the room, and demanded of them that they permit me to inspect the register or their certified copies; they had these books before them; they parleyed with me for a while, and finally, at the instance of Sheehan, they refused to let me examine the registers.

Q. What position did Sheehan hold? A. He was chairman of the board of inspectors; I had a list, I think, of forty or fifty names, and I then stated to Sheehan and the other members that I desired them to strike those names from the registry, on the ground that they were the names of persons not entitled to be registered, and I offered to prove by those three men that were with me, that these persons did not reside in the district, and were not entitled to vote; they refused to accept that offer of proof, and they refused to strike the names from the registry; it is hardly necessary to state that the interview on the part of Sheehan was especially insolent and defiant.

Mr. Curran — I move to strike that out.

The Chairman — I do not think that is competent.

Mr. Kiendl — He refused positively? A. He refused positively to take the proof or to strike the names from the register; we then applied to a justice of the Supreme Court to strike these names from the registry, and an order was entered finally; they came in voluntarily and struck off, I think, twenty names, and Judge Cullen ordered nineteen more names to be struck from the register; there were forty names struck off in that district.

Q. You have a certified copy of such order? A. I have a certified copy of all the proceedings, but I sent the papers to Judge Cullen last night for his examination in another matter.

Mr. Kiendl — I reserve the right to hand in a certified copy of that order striking out these names, and all the proceedings connected with that application to strike these names off.

The Chairman — You will have the opportunity to present them.

Mr. Kiendl — I have sent to New York for them. My copy is a certified copy, and Judge Cullen now has that.

Q. Now, did you at any time call at any of the election places in the eighth election district of the town of Castleton? A. Never, personally; no, sir.

Q. Do you remember calling at the fifth election district on election day? A. I do, sir.

Q. Will you please tell the committee what took place upon that day?

Mr. Curran — I object to his testifying to it, on the ground that he does not show any authority to be there.

The Chairman — What took place there, we will permit him to say. A. I prepared papers upon an application to Justice Cullen for an order to show cause —

The Chairman — Just tell what took place when you called.

A. I called at five o'clock, or a minute or two before or after five o'clock, in that afternoon, of the election day, at the polling place in the fifth election district of the town of Castleton, with an order of Justice Cullen; the door of the polling place at that time was closed and fastened; I tried the door and found it was locked; I rapped sharply on the door, and it was opened by a policeman; I stated to him that I had an order of Justice Cullen to serve on the inspectors; and I said, "You have no business to close this door during the canvass." Just as I was saying these words a man stepped up and pushed his head in between me and the door, and entered, and the door was closed in my face; I rapped sharply, and called out several times that I had a writ of the Supreme Court, and an officer on the outside came up and asked me what I was there for; I showed him the order of Justice Cullen, with Judge Cullen's signature at the bottom of it, and told him it was an order of the court, and that I desired to serve it on the inspectors; the policeman rapped sharply on the door with his club, and tried to procure admittance for us, and called out that there was an order there of Judge Cullen's; but the door was not opened; I kicked, and several of the men who were outside kicked and pounded upon that door, and we could not get admittance; I called out a number of times that I had a writ of the Supreme Court, and that it would be contempt of court if the door was not opened; I went around to the side of the booth — this was a temporary booth in an alley-way — and I found two windows at the side of the booth and papers pasted or fastened at the windows, so that I could not look inside; but I could see a light gleaming through the window pane; I rapped sharply on the window pane several times, both windows, and called out that I had a writ or order of the court, and that I desired to serve it on the inspectors, and that I demanded admittance, but it did no good; I heard voices inside; I could hear the people talking inside; the booth was built of thin boards, and was a temporary structure, rather unsubstantial character; and there was no difficulty in hearing what was going on inside.

Q. Was that before or after sunset? A. It was after sunset; it

was about ten or fifteen minutes after the polls should have been closed by law.

Q. Did any one go in or come out while you were there? A. Well, only this man who slipped in the doorway as I came up; that man was a policeman in citizen's clothes; I know him.

Q. Now, have you a copy of that order? A. I have the original order itself, but I forgot to bring it with me this morning; I have sent for it.

Mr. Kiendl — I also reserve the right to hand that in when it comes.

Mr. Curran — I will object to that; there is nothing to show what connection it has with the voting or anything else.

The Chairman — We will take the evidence.

Mr. Kiendl — Now, if you please, Mr. Philips, have you the watcher's certificate in your possession that Mr. De Morgan had issued to him? A. I have not that watcher's certificate in my possession; I sent it to the district attorney of Richmond county on Saturday last, and he has it in his possession now.

Mr. Kiendl — I also reserve the right to produce that.

Q. Now, Mr. Philips, I hand you a bill of particulars, and ask you to state whether you have, or have not, the postal cards that were sent to these parties mentioned in the bill of particulars, and what has become of those postal cards?

Mr. Curran — I object to this, if the committee please. I do not know what this paper is. It does not show any connection with the election at all.

Objection overruled.

A. No; there was no postal cards, Mr. Kiendl; there were letters addressed, I think, to all of these persons, and those letters are now in my possession; they were returned by the post-office; that is, all these persons referred to in this bill of particulars.

Q. Will you please read the names of these parties? A. W. Anthony, Barde avenue; James Poole, Richmond Terrace; Henry Cole, Richmond Terrace; John Casey, Barde avenue; Charles Dillin, Barde avenue; Peter Dailey, Barde avenue; M. Dailey, Barde avenue; John Donovan, Castleton avenue; Arthur Fairless, Richmond Terrace; James Gillespie, Barde avenue; William Hutchins, Barde avenue; S. O. Wilson, Richmond Terrace; Samuel Wilson, Richmond Terrace; F. McGoern, Livingston place; James O'Brien, Castleton avenue; James Platt, Henderson avenue; John McCarty, Henderson avenue; J. M. Potter,

Richmond Terrace; William Mansfield, Barde avenue; William Rafferty, Castleton avenue; F. A. Camp, Barde avenue; James Robinson, Barde avenue; A. L. Camp, Barde avenue; these are the names of persons purporting to be residents of the ninth election district of the town of Castleton, outside of Sailors' Snug Harbor; now, I ask your pardon about that; that is the ninth; I have made a mistake; the letters that I have are addressed to persons resident in the eighth; I thought that was the list as to the eighth; the names I have given are those alleged to be resident in the ninth, outside of Sailors' Snug Harbor; the letters I have mentioned were addressed to persons purporting to be resident in the eighth district of Castleton.

The Chairman — Any of the individuals whose names you have just stated? A. No, sir; not to the individuals I have just stated; I have made a mistake in the list; I think Mr. Kiendl handed me a list of the eighth; I have a list of the eighth.

Q. Will you kindly mention those of the eighth? A. I will read those in the eighth: John Andrews, James Allen, Martin Brown, William Clavin, Andrew Drew, J. Deschong, W. Fairlee, W. K. Hanks, W. H. Johnson, E. J. Keohan, O. Keith, James Keohan, Patrick Mahon, J. K. Nelson, J. Nichols, F. Peterson, James Reilly, Michael Sheehan, James Thompson, J. H. Thorn, A. K. West, H. E. Wright, William White, James Whelan; these are the names in the eighth district, and the persons to whom letters have been addressed and were returned by the post-office.

Cross-examination by Mr. Curran:

Q. What district was it that you went down to with the fifty names? A. That was the fifth district of the town of Castleton; that was on the second day of registration.

Q. Did you know whether it is necessary to have the poll-list or registry list hung up in the polling place before the third or last day? A. Yes, sir; the election law expressly requires that a certified copy of the registry shall be posted in the registration place after each registration day.

Q. Were the inspectors engaged in receiving names at the time you called? A. No, sir; they were not.

Q. What hour was it? A. It was about three o'clock in the afternoon.

Q. What were the hours of meeting for the purpose of taking names? A. I think the law requires that the registration places be open from nine in the morning until nine in the evening, or something of that kind.



Q. That was between those hours, was it not? A. Yes, sir; it was about three o'clock in the afternoon.

Q. You say there were thirty-nine names stricken from the roll? A. I think there were thirty-nine or forty.

Q. What became of the other ten? A. Well, there was some explanation made as to the other ten; I think in the case of three of them the names on the registry list were sworn to by the inspectors to have been incorrect in some respect and in the others our proof was not sufficient, or something of that kind.

Q. So that of the fifty names, forty did not vote, and the other ten were declared to be legally entitled to vote? A. No; there was no declaration; the court simply refused to strike those ten names from the registry; as to the other forty, they were stricken off.

Q. Do you know whether the other ten voted? A. I do not; no, sir.

Q. You know that the forty were stricken from the roll? A. I know that the forty were stricken from the roll; yes, sir.

Q. And the presumption is that the other ten voted, that were legally entitled to, is it not? A. I do not think you can draw any presumption of that kind; our proof was simply insufficient.

Q. You were there on election day, to protest or object to these men? A. I was not; I was engaged elsewhere on election day.

Q. If you thought they were not legally entitled to vote, why were you not there, or have somebody there? A. There were watchers there, one of whom was instructed to attend to that business.

Q. You do not know whether these ten men that were left on, voted or not? A. I do not, sir.

Q. Were you a watcher or an official in any way connected with the election? A. No, sir.

Q. Do you reside on the Island? A. I do not, sir.

Q. And then at the close of the polls in the fifth district, you say that the polls were closed? A. They were.

Q. Did you not serve any order? A. I did not serve Judge Cullen's order personally on the inspectors; I slipped a copy of the order underneath the doorway; I went there for the purpose of requesting the watcher —

Mr. Curran — I did not ask all that.

The Chairman — We will only take what is responsive to the question.

Q. You say you served it on a policeman? A. No, sir; I did

not; a policeman tried to procure us entrance to the polling place, so I could serve the order on the inspectors; but he failed in that.

Q. Were you present at any of the election districts on election day? A. I was not, except at this fifth district of Castleton, on the afternoon of election day.

Q. After the closing of the polls? A. After the closing of the polls.

Q. The canvass was being conducted at the time you called? A. I presume it was.

Q. It was after sunset? A. It was after sunset.

Q. You had no authority to be present there, had you? A. I had this, the law required that the canvass be public, and I was prevented from being present at the canvass.

Q. Do you know whether the place was crowded or not? A. I am positive it was not.

Q. How could you tell? A. I couldn't without looking inside.

Q. You could not look inside? A. I could not look inside; no, sir; except as the door was open, I could partially see in; I say now the place was not crowded.

Q. Are you positive of that? A. I am positive of that.

Q. How far was the door open, so that you could look in? A. It was wide enough open for a man to slip in.

Q. Suddenly? A. Yes, sir.

Q. Did he not slip in, as you claim it, suddenly? A. Pretty suddenly.

Redirect-examination by Mr. Kiendl:

Q. Mr. Philips, were you present at the trial of the election officers, or one of them, at Richmond county, during this week past?

Mr. Curran — I object to this, on the ground that the records of this proceeding, if there was any such proceeding, should be produced.

The Chairman — He may state whether he was present.

A. I was present at the trial, or during part of the trial, of three election officers of the town of Southfield; I was not present when they pleaded guilty, so that I cannot speak of my own knowledge.

Mr. Curran — I move to strike that out.

The Chairman — To what is that motion directed?

Mr. Curran — As to saying that he was present when they pleaded guilty.

The Witness — I said I was not present.

Mr. Curran — Then he says he was not present when they pleaded guilty, and that is an implication that they did plead guilty. If they want to prove any such thing as that, they must produce the record.

The Chairman — The committee will permit that statement to stand — but they do not consider it as evidence of any sort that they pleaded guilty. The committee does not take any such implication as that, or consider it evidence that they have pleaded guilty.

Mr. Curran — This man that you speak of as pleading guilty, was he not on trial for assault in ejecting a man from a booth? A. No; it was for violation of the election law; there were several indictments against them, but what they pleaded guilty to, I do not know; I was not there just at that time.

Mr. Kiendl — I will state to the committee that I have seen the warden of the penitentiary, and the gentleman has told me that the convicted election officers have refused to testify, unless they personally see Mr. Shepard, and it may be doubtful that even then —

Mr. Crosby — Mr. Shepard is the deputy Attorney-General?

Mr. Kiendl — Yes, sir. I have subpoenaed Mr. Horrigan and Mr. Hayes, but they not being here, I am willing to rest, except the introduction of the certificate of the Secretary of State and the watchers' certificate that Mr. Philips has sworn to, and the indictment against the election officers in the town of Castleton, Richmond county, provided no further testimony is taken. If there are any further days fixed for this matter, I shall ask the right to enter the indictments against these election officers in the fifth, eighth, ninth and eleventh election districts, town of Castleton, Richmond county.

Mr. Crosby — Also the record of conviction?

Mr. Kiendl — And the record of conviction.

The Chairman — You do not propose to take any more oral testimony then?

Mr. Kiendl — No, sir; unless this testimony of Mr. Shepard; Mr. Shepard is out of town, and, if the committee desire to have the confession that I understand he is possessed of, I will obey the order of the committee and subpoena Mr. Shepard either at Albany or any other place that the committee desires that he shall be called. It seems to me from the records of conviction we have now in the case I am thoroughly entitled to rest where we are.

The Chairman — The committee will adjourn this proceeding for

the purpose of enabling the contestees to produce their evidence until the twelfth day of June. I suppose the contestees desire an opportunity of that sort.

Mr. Curran — Oh, yes, sir.

The Chairman — And on that day, as I understand it, Mr. Bunker will probably be home again, and he can, doubtless, be produced, and the committee will give to the contestants the privilege of calling him at that time, if they desire to do so.

Mr. Kiendl — I should like to include in that motion Mr. Hayes.

The Chairman — Very well. We wish to state for the counsel of both parties that we do not intend to assume and direct what witnesses either party shall call in this proceeding. We are here for the purpose of taking such evidence as is offered to us, and we will do everything in our power to facilitate the taking of testimony of witnesses on both sides of the case. We do not direct the calling of any witnesses or experts, nor desire to summon any witnesses, except those that the parties think ought to be called, in order to establish their respective dies of the contest. The contestees will be expected by the committee to be ready to proceed with their case on the twelfth of June at ten o'clock.

Mr. Curran — I do not know whether it would be in order to make a motion to strike out the testimony of the bartender from Gravesend, given yesterday. I believe the understanding was that it was to be admitted upon the understanding that the counsel would connect it in some way with the registration list on election day. That has not been done, and, unless, as I stated yesterday, he does connect it, I move that all that testimony be stricken out.

The Chairman — You had better reserve that motion until the adjourned day. We will then be able to have the evidence written out, and we can see what it is.

Mr. Kiendl — I submit, Mr. Chairman, that if that registry list was made up in the manner it was made, as testified to by this barkeeper, from the fact that he himself registered his own name, and that it appears upon the registry list, which is in evidence, and it is for these people to show that that registry list was not made in that way, by calling these election officers who are serving their terms, and who refused to testify, when the committee demanded it.

The Chairman — The committee will dispose of that question on the adjourned day, and will not anticipate it.

Mr. Kiendl — I do not understand that your committee wants to go any further in regard to the taking of the testimony of the convicted election officers, after this refusal that has been made.

Mr. Crosby — You had better see Mr. Shepard and confer with him.

Mr. Kiendl — I intend to do that, and intend to call Mr. Shepard before this committee. I would like to ask for information whether the subpoena to be issued for Mr. Shepard should require him to appear here or to require him to appear in Albany before the whole committee. I would like to state that I desire to save Mr. Shepard all the time I can, if it can be done consistently with what the committee think proper. I would like to save him the time of going to Albany, because he is a very busy man.

The Chairman — Mr. Kiendl, any witness that you desire to subpoena and swear in this proceeding, you may subpoena for the adjourned day, the twelfth, here at this place; and the committee do not want you to understand that they express a desire that you should subpoena Mr. Shepard. If you think it material to your case that he should be subpoenaed and sworn, the committee are ready to hear his evidence; but they do not desire you to understand that they direct the issuing of a subpoena to him. That is a matter which must rest in your own judgment and discretion.

Mr. Kiendl — I think the committee rather misunderstood me. What I desired to know was whether they wanted I should subpoena Mr. Shepard to attend before the full committee in Albany or to attend here.

The Chairman — That would be an inconvenience, doubtless, to Mr. Shepard, and we can see no reason why we should not take his testimony here.

This proceeding is now adjourned until June twelfth inst., at ten o'clock, in the forenoon, at the City Hall, in the city of Brooklyn; the parties are to be then ready to go on at the close of the evidence, the right to introduce which has been reserved by the contestants. The contestees must be ready to follow right on.

Mr. Curran — I desire to consult with my associates in regard to that.

Mr. Crosby — We do not want to be met by the fact that subpoenas have not been issued.

Mr. Curran — No; I consider that we have sufficient notice.

## PROCEEDINGS.

COMMON COUNCIL CHAMBER,  
BROOKLYN, N. Y., *June 12, 1894.*

Present — Mr. Lester and Mr. Gibney, Committee.

Mr. George Kiendl, for contestants; Mr. James W. Glendinning, Mr. George W. Roderick and Mr. ——— Rawson, for contestees in the Sixth Senatorial District contest.

Edward M. Shepard, duly sworn for contestants, testified as follows:

By Mr. Kiendl:

Q. Where do you reside? A. In Brooklyn.

Q. Are you the deputy Attorney-General of this State? A. I am.

Q. Did you, as such Attorney-General, conduct the prosecution of the case against Kenneth F. Sutherland? A. I did.

Q. Were you appointed by the Governor of this State to that office? A. I was appointed by the Attorney-General upon the request of the Governor.

Q. And you still hold such appointment, do you? A. I do.

Q. In the prosecution of the Sutherland case, what indictment was he indicted upon, and did he plead to, that was tried in the May term? A. There was no trial in the May term; there were two trials, one, I think, in February, and one in March; both upon an indictment for oppression — oppression being the oppressive use by a magistrate of his power as such.

Q. Was he indicted subsequent to that for any criminal offense? A. Yes; he was indicted by the May grand jury; eight indictments were found by that same jury; those indictments were for various violations of the election law.

Mr. Glendinning — That is objected to.

The Chairman — Confine yourself, if you please, to those indictments which the committee have received; because there are some indictments upon which he has never been tried.

Mr. Kiendl — I am getting at the ones that he pleaded to.

Q. Please state what indictment that was that he pleaded to? A. He was indicted for procuring the inspectors of election in the second election district to make a false canvass of votes on the seventh of November last.

Q. Did he plead to that indictment? A. Yes; he pleaded guilty.

Q. Did he at that time hand you a statement signed by him or a

confession that was used on that indictment? A. He actually handed it to me the second day before.

Q. Was such a statement used on the trial of that case? A. Upon moving for sentence I read, with his consent and approval, and in his presence, in open court, the statement which he had made.

Q. Have you that statement? A. Yes; I have it with me.

Q. Will you please produce it? A. I will.

Q. It was signed by him? A. It was signed by him in my presence.

Q. Have you any objection to having this marked in evidence, and then handed back to you? A. No.

Mr. Kiendl — I offer this statement in evidence.

Mr. Glendinning — It is objected to.

The Chairman — State the grounds of the objection.

Mr. Roderick — It is not a sworn document; and it is mere hearsay statement. That is the ground of the objection. I do not think anything could be more incompetent. It is simply a statement drawn up by a party and signed by him, making certain statements reflecting upon others, charging them with crime in which he admits that he participated. If we are to be guided by the rules of evidence at all, this is surely not competent.

The Chairman — The committee would like to look at the document.

Mr. Roderick — You might as well go out and get letters from people and introduce them here. There is no chance to cross-examine. It is not even verified like an affidavit. It is not verified, is it, Mr. Shepard?

The Witness — No; not by affidavit.

Mr. Kiendl — The committee will bear in mind that it was in accordance with the ruling of this committee that after we had made an effort to get the evidence of Sutherland himself, going so far as to take an adjournment from this place of hearing to the jail where he is confined for the purpose of taking his testimony, that he positively declined to give the evidence; and it was only after that that the committee have been forced to put themselves in a position where this confession, signed by him, used on his trial, made a part of the trial, and which the court considered in sentencing the prisoner after a pleading of guilty — it was only after this had been done that this mode of introducing evidence has been resorted to; and only after other means have been exhausted. It is, of course, something which is only within his knowledge and within the

knowledge of those who took part in that crime. The committee is also aware that we have endeavored—this committee has—to get the sworn testimony of the other inspectors and election officers, all of whom have been convicted upon their own confessions, and are now serving terms of punishment.

Mr. Roderick — Convicted of what?

Mr. Kiendl — Of what?

Mr. Roderick — They are not convicted of crime.

Mr. Kiendl — I do not know what they are convicted of, if that is not it.

Mr. Roderick — You ought to read the indictments, which are in evidence, and find out.

By the Chairman :

Q. Kenneth F. Sutherland was a resident of the town of Gravesend, was he not? A. Yes; and a justice of the peace of the town, and, as justice of the peace, a member of the police board and a member of various other local boards.

The Chairman — The committee will receive this paper; and, if it is to be given back to Mr. Shepard, I think it had better be read so that the stenographer may spread it upon the minutes. The committee think it well that they should state that this paper is received upon the authority of the Court of Appeals of this State in a *quo warranto* case reported in the Twenty-seventh or Twenty-ninth of New York — the case of the People v. Pease (27 N. Y., 51), in which the court held that evidence which the committee believe to be of the same character as this now offered, was properly receivable on a *quo warranto* proceeding, and, therefore, certainly receivable by this committee.

Mr. Kiendl — Then I will read this in evidence :

“ From my knowledge of the election of 1893, held at Gravesend, including the direct knowledge I had and the knowledge which came to me indirectly, I estimate the number of fictitious votes cast at that election in the second election district to have been between eight and nine hundred; the total number of fictitious votes on that day cast in all of the districts to have been between fourteen and fifteen hundred. The actual votes cast at that election were about twenty-one or twenty-two hundred in number. The actual number of votes cast in the year 1892 at the election in Gravesend was 2,000 or 2,100, and there were cast in 1892 about 1,000 or 1,100



fictitious ballots. In both years the fictitious ballots cast were what is known as the straight Democratic ticket; in Gravesend the Democrats and Republicans were united; there has been practically no difference in Gravesend between Democrats and Republicans. In the election of 1888, 1889, 1890 and 1891 the vote of Gravesend was cast for the Republican tickets, and the votes in those years were, to some and an increasing extent, fraudulent and fictitious, but not to the same extent as in 1892 or 1893. I am unwilling to inculcate any other person, and am willing to take upon myself, without sharing with any one else, the burden of what I myself did in the second election district on last election day. I folded with my own hands two lots of paper ballots, each 100 or 200 in number, which were fictitiously cast in my presence on that day. I have placed in the hands of Mr. Shepard, the deputy Attorney-General, a full statement of my participation in the whole crime, including the concealment of the registry list and the casting of fictitious votes, given upon his examination of me.

"Carefully read and approved.

"Dated May 27, 1894.

"KENNETH F. SUTHERLAND."

The Witness — Those words "Carefully read and approved — Dated May 27, 1894 — Kenneth F. Sutherland," are in Mr. Sutherland's handwriting.

(Marked Exhibit A, of June 12, 1894.)

By Mr. Kiendl:

Q. Have you a tabulated statement of the manner of voting in the town of Gravesend in your possession? A. I have prepared as part of my brief upon the appeal to be argued next week in the case of the People v. McKane, a statement of the names as they appear upon the poll-lists. That is to say, portions of the names. I have it, not all, with me; I have the portions for the first and second district; the third I have prepared and that I have dictated, and it will be ready to-day.

Mr. Kiendl — I ask leave to put that comparison in evidence. It is a comparison of the registry list, showing, in addition to the one we have already in, the manner of voting in the town of Gravesend.

Mr. Roderick — The manner of voting?

The Witness — It simply takes the poll-list; and in the first and second districts, you will remember, the poll-lists are alphabeticized; and I had them put into strictly numerical order, and then

picked out the portions of the numerical order which, in my view, were suspicious, and have simply put them down on this paper.

Mr. Roderick — That is, it is a part of the argument which you have made?

The Witness — It is simply an argument.

Mr. Roderick — Does the committee think that that is evidence?

The Chairman — We will receive that on the same basis which we have received the statements of those who have examined the registry lists and counted the number of names, and made various computations. We will receive it for the assistance of the committee in their examination of the poll-lists themselves, which are already in evidence and of the registry lists.

The Witness — As this statement is incomplete at present, but will be finished in two or three days, I will then send it.

The Chairman — We will receive it, and the paper itself can be introduced later on.

Cross-examination by Mr. Roderick:

Q. The statement that has been introduced in evidence refers to a statement in detail which Mr. Sutherland gave you? A. Yes.

Q. You have that statement? A. I have not got it with me; it is a statement which I consider to be under my control as deputy Attorney-General.

Q. Both the statements were under your control in the same way? A. Yes.

Q. Have you any objection to producing the other statement? A. Yes; I have objection to producing that.

Q. This statement which has been introduced in evidence is to the effect that Mr. Sutherland was the agent, directly or indirectly, as he believes, in the casting of a certain number of fraudulent votes in the second election district?

Mr. Kiendl — Not what he "believes," but what he actually did.

Q. That was gathered from the other statement in detail? A. No; this statement is a statement entirely separate from that.

Q. But the other statement, I presume, sets out how much is part of this personal knowledge, and how much he gets from rumor, and from others, does it not? A. No; it does not; the other statement simply states his own personal knowledge.

Q. It states his own personal knowledge? A. And nothing else.

Q. So that if the two statements were compared together, we would be able to tell how much he states from personal knowledge as

to the number of votes that were cast at that election which were fraudulent? A. That I cannot say.

Q. You notice that in this general statement which is introduced he says that he folded himself two bunches of ballots of 100 or 200 each; now, there is a difference between 200 and 400 ballots, and there is a difference there that he does not state positively about; that he states of his own personal knowledge? A. I think that he states there what his personal knowledge was.

Q. In the other statement? A. No; in this statement; you have the measure of his personal knowledge; that is, if you mean by personal knowledge seeing with his own eyes and hearing with his own ears.

Q. He starts off by saying that from his knowledge, direct and indirect, there were a certain number of fraudulent votes cast at that election; but that does not distinguish how much of that is based upon his personal knowledge, and how much is based upon information he may have received from others — except that near the end of the statement he says that he himself folded two lots of paper ballots, 100 or 200 in each batch. That he states from his personal knowledge, of course. Now, I want to know if there is any way of determining the exact number of ballots cast, so far as he states it, from his personal knowledge? A. I think you can assume from this statement that the ballots he actually saw cast were those two lots of which he speaks.

Q. But he does not say whether it is 200 or 400? A. No; he says there were two lots of ballots, each of 100 or 200.

Q. Have you any reason which justifies you in not producing the other statement? A. I think I have; I think its production by me would be inconsistent with the administration of justice; I conceive that these papers came into my possession as being in the general charge of these Gravesend prosecutions; and I think it would be inconsistent with the efficient administration of public justice to make those details public.

Q. Is the other statement sworn to? A. No; I may say that in these cases I have not thought that an oath would add anything to the credibility of the statement.

Q. There is a difference between Mr. Sutherland's statement as to the number of votes that he folded and cast, which were fraudulent in the second district, and the statement made by the inspector of that district, is there not? A. On moving the sentence of Ryan, I think I stated publicly in court a piece of information given me by Ryan, as the inspector of that district, namely, that the two lots of ballots cast by Sutherland were each of them 200 in number, making

400 in all; I have no objection whatever to making that statement; if you look at the collocation of names, you will find, apart from anything, that those witnesses said the demonstration of the fictitious character of these votes is overwhelming on the face of the poll-lists.

Q. Did Sutherland say that he cast any which were not folded by himself, except those 400? A. I prefer to make no statement of any part of Sutherland's statement, except the public statement which I have produced here.

Q. But that does not involve anybody but himself, does it? A. No; it does not involve anybody but himself.

Q. He states in this that there were 200 or 400 ballots in the second district; I want to know if that is all that he states that he did himself personally? A. I think it is to be inferred from this public statement that that is all that he did with his own hands.

Q. But it appears that there is another statement, and, if you can say that that is all that he takes upon himself personally, that will be sufficient? A. I have no objection to stating that Mr. Sutherland's statement has been that what he did with his own hands was to cast those two lots of ballots; and that that is all that he did with his own hands.

Mr. Roderick — I ask the ruling of the committee as to whether Mr. Shepard shall produce the other statement or not. I ask that the other statement, which is referred to in this statement which has been put in evidence, shall also be produced.

The Chairman — The committee do not think that they are called upon to make any order for the production of any other statements.

Mr. Roderick — Do the committee deny us a subpoena to compel the production of that statement?

The Chairman — No; there has been no application made for a subpoena.

Mr. Roderick — It is simply to have the question passed upon while Mr. Shepard is here.

The Chairman — The committee will issue any subpoena which you ask for.

Mr. Roderick — I do not care to see that statement, if the committee, after looking at it, will say that it should not be introduced. Of course, I do not want anything which would interfere with the administration of justice. But, so far as it affects this controversy, I think that the committee ought to have that evidence so that a part can be introduced and a part left out.

The Chairman — The committee are not prepared to make any ruling upon that question until it comes up.

Mr. Kiendl — I now offer in evidence the original order signed by Judge Cullen in the matter of the application of Michael J. Horrigan.

The Chairman — In what proceeding is that?

Mr. Kiendl — That is in the proceeding to compel the inspectors of election to allow Mr. Horrigan to enter the polling booth, which was testified to by Mr. Philips, who stated that he had read the order to, and served it upon the election inspectors, after which they refused to allow him admittance to the polling place. He did not have the paper with him at the last meeting, but sent it over to me since.

Mr. Roderick — It is simply an order to show cause, directed to Michael J. Horrigan, why he should not permit some one to act as watcher for the Republican party at a certain polling place. I do not know what order was made upon it, or if it ever came before the court.

The Chairman — My recollection is that the witness testified that he had some paper or some order which he desired to serve upon the officials at that time, for the purpose of serving which he was endeavoring to obtain admittance. This I understand to be the paper which he had.

Mr. Kiendl — This is the original paper.

The Chairman — Is there any objection to it?

Mr. Roderick — Yes; we object to its introduction in evidence.

The Chairman — We will receive it, in connection with the testimony of the witness.

Mr. Roderick — We take an exception.

(Said paper is marked Exhibit B, of June 12, 1894.)

Mr. Kiendl — I have not yet received from the Secretary of State the certificate of the vote cast, and I ask the privilege of handing that into the committee later. That will conclude our case.

The Chairman — That can be presented to the sub-committee or to the full committee at the time of the argument.

Mr. Roderick — Is that the case for the contestants?

Mr. Kiendl — Yes.

Mr. Roderick — Do I understand that the committee have admitted in evidence the affidavits on the part of the relator in the Matter of the People of the State of New York in the Relation of

William J. Gaynor v. John Y. McKane and others, and not the record that was before the court?

The Chairman — We received what was understood to be the record of that proceeding. If any portion of it was omitted, the contestees may introduce the remainder.

Mr. Roderick — We are certainly not going to introduce their evidence. What I want to know is whether part of the record only was admitted or the whole record?

The Chairman — The committee understands that the whole record was admitted.

Mr. Roderick — I ask that because, for the convenience of the committee, we have produced here one of the appeal books which contains the entire record, including the affidavits, order to show cause, and the opinion of Judge Barnard. If it is all in evidence, it will be considered so. The reason I make this suggestion is that we desire in putting in our evidence to shorten the labor of the committee as much as possible; and we do not want to prolong the thing by introducing a lot of evidence that will be immaterial to the questions that are before the committee. We want to have it depend upon — the contestants having presented their case — there being any evidence that it is necessary for us to reply to; and we would simply reply to that evidence. For instance, they have made one point in the case here, that a certain number of votes were cast in the second district of the town of Gravesend; and that within the time allowed by the law for the opening and closing of the polls it was impossible to have cast that number of votes, if the voters had been there and voted; and in that view they introduced the testimony of some club man, who stated that he made a little experiment up at his club house, with some others. Such evidence as that of course is merely speculative; and that, and other evidence of that nature, we would not reply to. Of course, no subpoenas have been issued. We have some testimony that we could read, which has been given in the other contests where this counsel has appeared and examined the witnesses; and if they want to shorten the time any we can read that testimony. If they object, of course we will be obliged to subpoena the witnesses and produce them here before the committee, and compel them to give the same testimony over again. For instance, we show that in the town of Flatbush, on election day, a certain number of votes, I think 1,700, were cast; and that an experiment was made in the town of Gravesend by the Senate committee during its investigation in contesting the seat of Sena-

tor McCarthy, with the result that in a certain period of time so many votes were cast. And in the Graham case the same experiment was made. Now it is necessary to produce those witnesses; or, if they want to shorten the hearing, we will read their testimony from the record. If objection is made to that we shall need subpoenas, and an opportunity to serve the witnesses. For that purpose we shall need a short adjournment, whatever the committee may suggest. It was understood that when they closed their case, we should have a reasonable adjournment for the purpose of preparing ours.

The Chairman — It was announced at the last meeting that the proceedings were adjourned until this morning to enable the contestees to put in their evidence; and the Chair distinctly stated that he did not wish to be met this morning by any statement that subpoenas had not been taken out, or that witnesses were not present. After such a statement as that the committee is not now inclined to adjourn this proceeding for the purpose of procuring witnesses. The witnesses should have been produced here this morning. We are ready to go on and hear their evidence to-day.

Mr. Roderick — I do not think the contestees could have understood that.

The Chairman — I will read the statement then made for the information of counsel.

Mr. Roderick — I do not think counsel could have understood that, as they are now attending the Convention to-day.

The Chairman — From what proceedings do you propose to read, that you have just been speaking of?

Mr. Roderick — From the proceedings before the Assembly, and before the committee.

The Chairman — What objection, Mr. Kiendl, have you to that?

Mr. Kiendl — I have this objection: I was obliged by the ruling of the committee, to bring every one of my witnesses here. I offered to do that very thing, to read the evidence which they had already given, but this very counsel and his associate, objected to my doing so. So that it does not come with a very good grace, after they have obliged me to bring my witnesses here, to go to Staten Island and bring all these old sailors to appear personally before this committee; after they have obliged me to do that, they cannot with very good grace come in here and ask the committee, as a matter of favor, to allow them to do

something which they refused to contestants the privilege of doing. This adjournment was expressly had ——

The Chairman — That is all that it is necessary to say, that you object.

Mr. Kiendl — I do object.

The Chairman — I call the attention of counsel for the contestees to this statement, made by the chairman at the last meeting:

“The Chairman — This proceeding is now adjourned until June twelfth instant, at ten o'clock in the forenoon, at the City Hall, in the city of Brooklyn; the parties are to be then ready to go on at the close of the evidence, the right to introduce which has been reserved by the contestants. The contestees must be ready to follow right on.

“Mr. Curran — I desire to consult with my associates in regard to that.

“Mr. Crosby — We do not want to be met by the fact that subpoenas have not been issued.

“Mr. Curran — No; I consider that we have sufficient notice.”

Mr. Roderick — I had no notice to that effect at all.

The Chairman — If you had been in court you would have had notice. Mr. Curran, who represented the contestees, had notice and expressed his appreciation of what that notice meant.

Mr. Roderick — Assuming that to be so, still we are taken by surprise in the matter. We could have had subpoenas, certainly. There is no desire for delay; but of course, as Mr. Kiendl objects to our reading the testimony, we will have to produce the witnesses here.

Mr. Kiendl — I wish to call the attention of the committee to the manner in which these contestees have carried on the contest.

Mr. Roderick now appears for the first time in this case, except for a very short time on the first day. We have had all kinds of counsel in the matter — at one time one counsel, and at another time another. The counsel for the contestees have been late at every hearing. They were never on time. We have waited on several occasions hours for them to appear; and at other times they never appeared. I submit, therefore, that this adjournment is asked only for the purpose of delay.

The Chairman — Notwithstanding the fact that we think the contestees had ample notice, and ought to have been prepared this morning to go on with their proof, yet the committee are



disposed to adjourn until to-morrow morning at ten o'clock, and to hear then any proof which the contestees may be ready to produce; and we will issue now such subpoenas as the contestees desire.

Mr. Kiendl—I want to call the attention of the committee to the fact that a number of these people they have talked of calling are now in the penitentiary, and have already refused to appear before this committee or to be sworn.

The Chairman—The committee will hear such witnesses as the contestees may produce.

Mr. Roderick—May I ask the committee a question. Probably it may guide us somewhat in offering the evidence. What is the method of procedure that the committee will adopt at the close of the testimony? Will the evidence be reported to the full committee?

The Chairman—The committee will report the testimony which they have taken to the full committee, and the full committee will set down the matter for a time when both parties can be heard by argument.

Mr. Roderick—And that argument will probably be in Albany?

The Chairman—That argument will be in Albany.

Mr. Roderick—If there is any way I can assist about this record, with a view to saving time, I shall be glad to do so.

The Chairman—I do not see any objection to receiving that printed book for the aid and convenience of the committee, in the same way that statements, figures, computations and all that sort of thing have been received.

Mr. Kiendl—I have no objection to that.

The Chairman—It is not original evidence; and if there are any errors in it either party is at liberty to point them out.

Mr. Roderick—The original evidence has been admitted; this is simply a printed copy of it.

The Chairman—If that printed copy is found to be defective in any respect, either party can point it out.

Mr. Roderick—Then I will furnish this printed book for the convenience of the committee.

The Chairman—The committee take it for that purpose.

(Said printed copy of "Appeal Papers" in the case of the People ex rel. Gaynor v. McKane and Others, is marked Exhibit C for identification, June 12., 1894.)

Mr. Rawson—I have been requested by Mr. Mullen to appear here this morning and look out for his interest. Of course the committee is aware of the fact that, not having appeared here before I am not very familiar with the situation. I understand that these gentlemen have here certain testimony which has been taken before committees of the Senate and Assembly. I do not imagine that my friend, Mr. Kiendl, is unprepared to argue whatever matters may come up for argument upon that testimony, because he is entirely familiar with it from beginning to the end; and I can see myself no reason whatever for any adjournment for the purpose of producing that testimony; because it cannot be varied if we bring the people here under oath. I do not see any reason why this record cannot be verified and produced in evidence before this committee, so as to have that part of the matter disposed of; and I would suggest that that course be followed, unless they have some reason why they cannot do it. But I do not think that Mr. Kiendl will seriously object; because it is in the way of saving time of the committee and of the counsel for the respective parties.

Mr. Kiendl—If this were a matter somewhat different as far as positions were concerned, I would certainly take the suggestion of my friend, Mr. Rawson; but we are met with this fact—that since this testimony was taken some of these men have begun to serve their terms of imprisonment in Sing Sing for crime; and, therefore, I cannot allow that evidence which they have given in the other cases to stand as matter of record in this case, when we have the fact of the conviction of these very people of crimes that they have committed, and which they have confessed, and which conviction shows on the face of it that the statements made by them, in the giving of this evidence, was perjury.

The Chairman—The admission of this evidence must rest wholly on arrangement between counsel. When Mr. Kiendl offered to read the testimony of this sort it was objected to and the production of the witnesses insisted upon. Now, if Mr. Kiendl sees fit to object to the introduction of that sort of testimony by the contestees, the committee must make the same ruling.

Mr. Rawson—I did not think he would object, because it would be undeniable that as to such of those witnesses as have been convicted, the fact of conviction would, of course, tend to that extent to discredit the testimony.

Mr. Gibney—Is that the only objection you have to admitting the record evidence of the Senate and Assembly committees—

the fact that these men have been convicted of crimes, and are now undergoing imprisonment?

Mr. Kiendl — That is the main objection.

Mr. Gibney — Will you admit that — that those men who gave that testimony are now serving sentences for crimes?

Mr. Roderick — No; but if any testimony is now read of a witness who is now serving a sentence, we will admit that he is the individual; but we will read also the testimony of men not connected with the election at all.

Mr. Gibney — I am only speaking of this particular case, with a view to shorten it. Is that all of your objection, Mr. Kiendl?

Mr. Kiendl — That is all.

Mr. Roderick — Any testimony that is read of a man who is convicted, of course there is no occasion to deny that he is the man who is convicted.

Mr. Gibney — Mr. Kiendl offered to do this very thing at the opening of this investigation, and it was refused; and, therefore, he thinks that this proposition comes with a bad grace from the other side. But, notwithstanding that fact, if counsel can agree, and the only objection taken is that these very men have been convicted, and are serving their terms in prison; if you can agree on that, it will shorten this whole matter.

Mr. Kiendl — The committee will see what trouble that puts me to. They ruled me out under their objection to this evidence, and every single time I offered that evidence I was met with the same objection. I think that I have done everything I can do. The gentleman can make his offer, and then I will go over it and see if I can agree with him as to the evidence he wants to introduce; and in that way we may avoid all difficulty about it.

Mr. Gibney — Then you gentlemen may get together and see what you can do by way of agreement between now and to-morrow morning.

Mr. Kiendl — We will try, and we will shorten it if we can.

The Chairman — We will adjourn our hearing until to-morrow morning at ten o'clock.

Mr. ——— — Here is a witness who wants to be heard.

Mr. Gibney — Did you subpoena a man named Horgan?

Mr. Kiendl — I did. I called him two or three times, but could not get him.

Mr. Gibney — Then you do not need him any further?

Mr. Kiendl — No; I have rested as far as I am concerned. I subpoenaed Mr. Horgan four times.

Mr. Horgan — I had to go to Richmond on the other cases.

Mr. Kiendl — I supposed you did; but it is not my fault.

Adjourned to Wednesday, June 13, 1894, at 10 A. M.

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## PROCEEDINGS.

COMMON COUNCIL CHAMBER,

BROOKLYN, N. Y., *June 13, 1894.*

Present — Mr. Lester and Mr. Gibney, committee; Mr. George Kiendl for contestants; Mr. James W. Glendinning, Mr. George W. Roderick, for contestees in the Sixth Senatorial District contest.

Edward Sweeney, duly sworn for contestees, testified as follows:

Mr. Roderick — I would ask if the committee has the exhibits in their possession here — the original papers — especially in this contempt matter. There are a number of watchers' certificates which were attached to the original affidavits, to which I wish to refer and to show to the witness.

The Chairman — We have not the original papers in our custody at present. You offered printed copies yesterday.

Mr. Roderick — For the convenience of the committee I furnished one of the printed books; but, of course, in examining the witnesses it will be necessary to refer to the original documents in order to ask a witness if that is his signature. I saw the records here one day and I did not know but that they were still here.

The Chairman — Have you those papers, Mr. Kiendl?

Mr. Kiendl — They were returned to the files of the court.

Mr. Roderick — I am not supposed to subpoena them to bring their exhibits here.

The Chairman — They were not taken from the custody of the county clerk. They were produced and marked.

Mr. Roderick — Then they should be produced at any time it is necessary to examine them.

The Chairman — They are on the files of the court; and if you want to use them I suppose you have only to send for them.

Mr. Kiendl — If the committee will notify the county clerk to produce them here, the sergeant-at-arms can obtain them.

The Chairman — Make a memorandum of the papers you would like and the sergeant-at-arms will request their production here.

By Mr. Roderick:

Q. Where do you live? A. No. 70 Vernon avenue, in the Twenty-ninth Ward of the city of Brooklyn, lately the town of Flatbush.

Q. Were you one of the inspectors of election at the general election held in Flatbush in April last? A. No.

Q. When were you an inspector of election down there? A. I had been for three years prior to last April.

Q. In 1893, on the first Tuesday in April, were you an inspector of election? A. I was.

Q. Was that election held under the new ballot reform law? A. Yes.

Q. That is they had booths there? A. Yes.

Q. Did you have poll clerks? A. Yes.

Q. And another inspector besides yourself? A. The four justices of the peace were the inspectors.

Q. And you had registry clerks also? A. Yes.

Q. How many tickets were in the field? A. I am not clear on that; there were three or four.

Q. There was a Democratic ticket? A. Yes.

Q. And a Republican? A. Yes.

Q. Was there a Prohibition ticket? A. It is necessary to refresh my memory, for the reason that I did not come here prepared to give any testimony of things that happened a year and a half ago.

By the Chairman:

Q. State from the best of your present recollection. That is all you can do. A. The town clerk will probably have a better recollection of that than I have.

Q. You can speak from your own recollection? A. I know that there were three or four tickets; I am not positive.

By Mr. Roderick:

Q. How long were you at the polling place that day? A. I was there from sunrise until sunset.

Q. Was the election conducted in the usual manner? A. It was.

Q. How many votes were cast during that day? A. 1,685.

Q. In about how many hours? A. I don't know; it was from sunrise until sunset on that day, the first Tuesday of April, 1893.

Q. Was there any intermission during the casting of votes?  
A. Yes.

Q. When? A. At noon, twelve o'clock.

Q. How long did that intermission last? A. Probably from half to three-quarters of an hour, for the purpose of holding a town meeting; it was our regular town meeting to transact the business of the town.

Q. Was there a constant line, or a continual rush, during the day while the voting was going on? A. At times, but not continuous.

Q. Could there have been a much larger vote than the vote cast there? A. There probably could have been a hundred more votes cast without any doubt in my mind.

Q. The tickets were folded the same as at the general election which is held every year? A. Yes; according to the new system.

Q. And a time allowed for doing it, and so forth? A. Yes.

Q. You are a justice of the peace in the town of Flatbush?  
A. I am.

Q. How long have you resided there? A. For twenty-three years.

Q. And how long have you been a justice? A. This is the fourth year of my serving.

Cross-examination by Mr. Kiendl:

Q. Was there a registry list prepared for that election before the election took place? A. Yes.

Q. Did you see the registry list? A. There was a registry clerk from each district sitting at the tables in front of the inspectors; and as a man came up to vote his name was called out, and the district that he resided in, was called also, and the clerk who had charge of that registry book referred to it to find out if his name was on the registry roll.

Q. How many districts did you have? A. Eight districts.

Q. And you had eight registry clerks? A. Yes.

Q. One for each district? A. Yes; one for each district.

Q. Don't you know that under the general election law you have only two registry clerks? A. No, sir.

Q. You had eight registry clerks? A. One for each district was present at that time, at this election.

Q. So that you had eight registry clerks? A. We had one for each district, and there are eight districts.

Q. Do you know the number of voters in each district? A. I do not.

Q. There were how many votes cast? A. There were 1,685 votes cast.

Q. In all the eight districts? A. Yes.

Q. And they are divided up into about equal parts, are they not? A. As near as possible.

Q. So that in each district there would be in the neighborhood of about 400 or 500 registered voters on the list? A. No; some of the districts would not reach 400; I don't believe that any of them reached over 400.

Q. The highest registered vote in that town is what? A. I cannot tell you.

Q. Would it be more than 450? A. No; it would not reach 400, as far as I know; I am not clear on that; I cannot answer that.

Q. But you are certain that there are not more than 500 registered voters in any one district? A. Yes; I am positive of that.

Q. Who prepared the ballots, or handled the ballots; or did each person have his ballot as he came into the place? A. I will describe to you how they voted; Judge McMahon took the names of each voter as he came in, and attached his signature to the ballot on the outside of this slip, on the perforated end of it; and his name was taken then by Judge Kelly; and then the ballots were handed over to him; and he went into the booth; and after coming from the booth the ballots were handed to me; and I took the ballots that he rejected and placed them on one box, and the ballots that he voted were placed on another box; the slips were torn off and placed in another box; and the rejected ballots went into a box kept for that purpose; and the ballots he voted went through the same process; that is, the slip was torn off and placed in one box, and the ballot he was to vote was placed in another box and at the end of the evening the voted ballots were counted and the slips.

Q. How many inspectors did you have? A. Four.

Q. How many ballot clerks did you have? A. One.

Q. How many poll clerks did you have — one for each district? A. No, sir; you might call them poll clerks, or registry clerks; I don't know what their name is; there was one from each district who had charge of the books from that district.

Q. And he took the names of the persons? A. He did not; he checked the name of the person that voted; the poll clerks took the name of the person that voted.

Q. This voting took place from sunrise until sunset, in the month of April? A. Yes, on the first Tuesday in April.

Q. This was what is known as the town election? A. Yes.

Q. Or the spring meeting? A. The spring meeting, or town meeting.

Q. What officers were voted for at that election? A. A justice of the peace.

Q. During the day was there not a long line of people—a good part of the day? A. At times, yes.

Q. There was a line of people extending sometimes nearly two blocks, was there not? A. I don't know; I can't tell you that; I was busy.

Q. But was there not a long line there continuously? A. I don't know; I can only tell you that the only line I saw was of those in the room.

Q. That is all you saw? A. Yes.

Q. How it was outside you could not see? A. No; I did not make it my business to look out.

Q. You do not know but what there was a line extending a block on the outside? A. I do not; no, sir.

Q. During the time you were in the room there was that line almost all the time, was there not, as far as you could see out of the door? A. It broke up at times; we had an opportunity there to have a cup of coffee and a sandwich during the day; and then had our town meeting.

Q. The town meeting lasted half an hour? A. Yes; half or three-quarters of an hour; I did not time it.

Q. Do you know how many booths you had? A. I do not know how many we had; but I know that the booths were put there by direction of the supervisor, according to the number of voters that were registered; that would be one booth for every fifty voters.

Q. They were provided for in accordance with the law? A. Yes.

Q. Then you had in the neighborhood of twenty-five or thirty booths? A. I presume so; I cannot tell you exactly; I did not count them.

Q. But there were about that number, were there not? A. I presume so.

Q. And those booths were in constant use during the day, were they not? A. Part of them, a few of them, were in constant use.

Q. They were there for use? A. Yes; that is what they were put there for.

Q. You did not watch the people as they were going into the booths? A. I did not; I had my business to attend to.



Q. And that kept you pretty busy, did it not? A. At times, yes.

Q. Do you know how many hours or minutes a day is longer in April than it is in November? A. I probably can tell; but I cannot state it to the minute now.

By the Chairman:

Q. How many officers were voted for at this town meeting? How many names were on the tickets? Do you remember? A. I do not.

Q. At what point in the proceedings was the name of the voter announced so that the person in charge of the registry lists had an opportunity to find his name — when he came out of the booth and presented his vote? A. Before going into the booth his name and the number of his ballot was called out to the poll clerk; and then after coming from the booth and handing his ballot to me I would ask his name, and then call out his name and number to the poll clerk; and when he said "Correct," I would take off the slip and deposit the ballot.

Q. But you waited until his name was found upon the registry list before you deposited his ballot? A. Yes; he could not get his ballot until his name was checked off by one of these eight clerks — one from each district, who had charge of the book of that district.

Q. The ballot was not delivered to him until his name was found on one of those registry lists? A. No, sir.

Q. Who called his name off for the purpose of enabling the clerks in charge of the registry list to find his name? A. Judge McMahon; he had charge of delivering the ballots; for instance, I would come to vote; he would say, "Edward Sweeney;" "What district?" "The second district;" then he would call off to the clerk with the register of the second district, "Edward Sweeney, second district."

Q. Then the voters as they came in would give him the information — their name, and the district they resided in — and he would call it off to the person in charge of the registry list of that district? A. Yes.

Q. And then if his name was found upon the registry list a ballot would be given to him? A. Yes; and when he came out of the booth and handed the ballot to me, I would say, "Edward Sweeney — 170 — correct."

Q. After he came out of the booth the matter of finding his name upon the registry list had already been disposed of? A. Yes.

Q. So that all that was necessary at that time was to check his

name upon the poll-list, which the clerk had kept, and on which he had previously entered his name? A. Yes.

By Mr. Roderick:

Q. And they had to check the poll-list also? A. They had to check the poll-list; I presume they can be furnished for evidence if necessary.

Q. They were not only checked on the poll-list, but on the registry list also? A. Yes.

Q. And the number of ballot that he voted? A. Yes; as I said before, suppose there would be a man come in to vote, and he gave his name, "Edward Sweeney;" "What district?" "Second district;" the clerk would look on the second district and say, "Correct;" then the poll clerk would write that name down, and the number of the ballot; then the voter would go into his booth; and when he came out would turn the ballot over to the inspector; and the inspector would look at it and ask, "What is your name?" "Edward Sweeney;" "No. 170;" then the clerk would call out, "Correct."

Q. They voted in the usual way, the same as they do at the general election? A. Yes.

The Chairman — You had better let the witness state in what way they voted. We do not want to take his conclusion about it, because it is manifest from his statement that they did not do anything of that kind.

The Witness — Of what kind?

The Chairman — Vote in the way in which they did at the general election.

Mr. Roderick — I do not see why they voted differently.

The Chairman — He says that there were eight registry lists there — a thing which did not occur at the general election.

By Mr. Roderick:

Q. Instead of having one registry list, with the names of all the people in the eight districts, the names were in eight separate books? A. Yes; eight separate books.

Q. And when a voter first came in, the district in which he lived was ascertained, and then his name was looked for in the book of that district? A. Yes; I have stated that repeatedly.

Q. But sometimes voters upon coming in would not remember the district; is not that so? A. Yes; and probably some one that knew him would know the district that he resided in.

Q. It would make a delay then to find it? A. Yes; it would make a delay sometimes to find just where the man's name was.

Q. That happened there on that day repeatedly? A. Yes.

Q. So that instead of looking in one book they would have to look in the eight books to find the man's name? A. Yes.

Q. Is there anything different in the way they voted on election day, except that they had those eight registry books instead of one?

A. Not at all; everything else was the same; this was a county town; it is not a ward or city, and the voting was not in each separate district, as we did last spring; we voted then all in one district — the same as any county town is governed; the Constitution of the State calls for an annual town meeting, at which there shall be certain officers elected.

Q. You do not remember the number of officers that were elected at that election? A. I am not clear on that point.

Q. There were justices of the peace elected? A. Yes.

Q. Was a town clerk elected? A. No; I don't think so.

Q. Was an excise commissioner elected? A. I believe so.

Q. A highway commissioner? A. I don't think so.

Q. Auditors? A. There was probably an auditor; I am not sure; I did not prepare myself to come here and testify.

Q. Then there were three inspectors in each district, were there not? A. I think so.

Q. That would be twenty-four inspectors? A. I think they are elected in November; I am not sure about it; if I had known that you people wanted to go so clean into it I would have come prepared to give you a clean and clear statement; for I have no interest in the case one way or the other.

By Mr. Gibney:

Q. You have been a justice of the peace how long? A. I am serving now the fourth year.

Q. What is the term of office of your supervisor — one year or two years? A. I cannot tell you that; it has been two years right along; lately there has been some haggling that I don't understand.

Q. Did you elect a supervisor the year you are speaking of? A. No, sir.

Q. Or a town clerk? A. I cannot recollect.

Q. But you are sure of the justice of the peace? A. That is constitutional; we have got to do that at the town meeting; there is no question about that.

Q. One? A. Yes, one; or to fill a vacancy; you may elect four of them if there are vacancies.

Q. You do not recollect whether there were full town officers elected that year or not? A. I would not state that positively; I don't believe there was.

Q. Do I understand you to say that you were the only person that received the ballots there that were voted on that day? A. I was relieved at times by Judge Kelly.

Q. But there was one person who received the ballots that were voted? A. Yes, sir.

Q. And that was your duty? A. Yes.

Q. And you received all of those 1,685 ballots excepting such as were voted when you were relieved? A. Yes.

Q. That is, you received all that were cast between sunrise and sunset on that day? A. Yes.

By Mr. Roderick:

Q. Who was it relieved you that day? A. I cannot recollect; it was Judge Kelly or Judge McMahon, and I am not clear which.

By Mr. Kiendl:

Q. How large was that room which you did your voting in? A. It was a little larger than this room.

Q. And the booths were all arranged in that room, were they not? A. Yes.

Q. At this election you did not elect any inspectors of election? A. I have stated that I am not clear in my mind on that.

Q. The only recollection you have of who were elected at that town meeting were the town officers? A. Yes.

Q. The justices of the peace? A. Yes.

Q. And the highway commissioner? A. I did not say that; I am not sure; I don't want to tell you anything I don't know; it will be impossible to get anything out of me that I don't know.

Q. Was there any challenging done? A. I believe there was one or two.

Q. Was that all? A. Yes; that is about all.

Q. Can you tell us of one case where a man presented himself who did not know, or some one who was there did not know, in what district he lived? No, sir; my end of the work had nothing to do with that part of it.

William J. Buttling, duly sworn for the contestees, testified as follows:

By Mr. Roderick:

Q. You are the sheriff of the county of Kings? A. Yes.

Q. Were you the president or chairman of the Republican general

committee of Kings county during the last campaign? A. In the year 1893; yes.

Q. And the Republican general committee issued watchers' certificates to Republican watchers throughout the different election districts in the county of Kings, did they not? A. The county committee issued the certificates to the various executive members to be distributed in the various wards and towns in the county.

Q. Were those certificates authenticated by the general committee? A. By the secretary and president of the general committee.

Q. By their signature? A. Yes.

Q. Will you just state to the committee what was the method of issuing those certificates, and how they were distributed?

Mr. Kiendl — I wish to object to any evidence as to those that are not connected with this case.

Mr. Roderick — It is only preliminary.

The Chairman — We will take the evidence as to the general method employed.

A. It has been customary for the county committee to have a certain number of certificates printed, about 3,000; there are about 678 election districts in the city and twenty-two in the four towns, and each town has one member who is known as the executive member of the committee; that member receives the certificates from whoever is chairman or secretary of the campaign committee, to be distributed among the watchers in the various election districts in the various wards and towns; that has been the rule right straight along.

By the Chairman:

Q. And that is the method that was employed in November? A. Yes.

By Mr. Roderick:

Q. How were the certificates signed — by you personally, or in what way? A. I did not sign the certificates in the year 1893 because I was a candidate, and did not have time to sign them; so I authorized Mr. Watkins, a clerk of the executive committee, to sign my name.

Q. Your name was signed in that way; how was the secretary's name signed? A. It was stenciled; Alfred Ray was a candidate for the Assembly, and he was in the same boat; he was looking for votes and so was I; and did not have time to sign his name.

Q. These were printed certificates? A. Yes; they were printed, and in the blanks the names of the various watchers were inserted.

Q. The executive committees of the various wards and towns in the county would receive a certain number of these certificates with the other election paraphernalia? A. Yes; the rule was to send more than enough for each election district; for instance, the ward I am in has sixteen election districts, and the executive member of my ward would receive, perhaps, forty certificates; probably thirty-two would be all that he would use, but he would receive forty — for use in case some one turned up, and he wanted to use more.

Q. Who was the executive committeeman of your ward in the town of Gravesend? A. Mr. Stratton.

Q. I show you a printed watcher's certificate attached to an affidavit which is in evidence here, and ask you if that is one of the forms of certificates? A. That is one of the certificates that was used; that was the certificate we issued, except that the name and district was not in it; it was issued in blank and filled out by the president of the town Republican committee.

Q. You have examined the twelve watchers' certificates in evidence here, attached to the affidavits of the Republican watchers, and have identified them in several proceedings, have you not? A. I have examined a number of certificates and identified them as certificates that were issued by the county committee.

Q. These certificates are issued in blank, with the name of the watcher and the number of the district and ward to be inserted? A. Yes; they are always in blank.

Q. And those are filled in by the local officers? A. Generally by the president of the ward or town committee, or by the executive member.

Q. And under the by-laws of your committee, the power of removal and of substitution is vested in them, is it not? A. Yes.

Mr. Kiendl — I object to that, unless they produce the by-laws.

Mr. Roderick — I will put the by-laws in if you want to make record of them; in fact, that by-law is in evidence, because it is a part of the record which we have put in.

Mr. Kiendl — Then the by-law speaks for itself if it is in evidence.

The Chairman — You had better produce the by-laws.

Mr. Roderick — The by-law is in evidence; it is part of the record we have put in.

The Chairman — Then you had better refer to it.

Mr. Kiendl — If it is in it speaks for itself.

Mr. Roderick — I am simply calling his attention to it.

Cross-examination by Mr. Kiendl:

Q. You issued quite a number of certificates to different people and I suppose you cannot remember all the names? A. The certificates were all issued — I can explain the way it was done if you wish; it will not take two minutes; it is generally understood that I issued certificates to everybody; but I did not in fact; the way it was done is this: the chairman and secretary of the general committee is supposed to sign them, but, as you understand, the executive committee constituted the campaign committee of the Republican general committee of this county; they elected a chairman and president; we merely sign the certificates and turn them over to them; they distribute them to the various executive members; and they distribute to the various captains in the various districts, wards and towns.

Q. There were watchers' certificates issued to Colonel Bacon, to Mr. Grout and others, were there not? A. I can tell you all about that if you want to know it; I would just as soon tell the truth about that; I don't suppose there was; I understand, though, what you are getting at.

Q. Can you tell how many in number there were issued for the town of Gravesend? A. No; I signed them myself.

Q. How many for each district? A. In the town of Gravesend there were six districts; and I think they got twelve or fifteen certificates.

Q. Those were all signed by you? A. No; they were signed by Mr. Watkins; he was authorized to use my signature; the certificates you speak of were fifty that were given to Mr. Johnson, and that I personally signed.

Q. Those were delivered and used in the town of Gravesend? A. I don't know that; I suppose they were.

Q. That is what you supposed they were for at the time? A. I did not suppose much at all; I was a candidate then myself, and I didn't have any chance to suppose; I was busy looking for votes.

Q. You say that those watchers' certificates which are issued in this manner are usually filled up by whom? A. By the captain of the district located in the particular town or ward.

By Mr. Roderick:

Q. You say that you gave fifty certificates to Mr. Johnson. That is Mr. Jesse Johnson that you refer to? A. Yes.

Q. He is the executive member of the Twentieth Ward of the city of Brooklyn? A. Yes.

Q. He asked you to sign personally fifty blank certificates for

him? A. He came into the Republican headquarters on the Saturday night before election, between five and seven o'clock, and he said, "Have you got any blank certificates?" I said "No." I called one of the clerks who was there, and I said to him, "Get some certificates;" we didn't have any blanks; so they produced about fifty that my name was already signed to by Mr. Watkins; and so I simply took a pen and scratched out my name and then wrote my name over it.

Q. And you gave him those fifty blank certificates signed in that way? A. Yes.

Q. You did not authorize him to use them in any particular district? A. I had no power to do that.

Q. And he did not say where he wanted to use them? A. He said he wanted them for Mr. Gaynor; that is all.

Q. You did not intend to revoke any certificates that had been already issued? A. I had no power to revoke them.

By Mr. Kiendl:

Q. You had at that time a talk about Gravesend? A. No; I did not.

Q. You knew at that time that Mr. Gaynor was interested in the town of Gravesend, did you not?

Mr. Roderick — That is objected to.

Q. And that these certificates that you signed personally were to be used for or by Mr. Gaynor? A. Mr. Gaynor was to use the certificates.

Q. You left it with Mr. Johnson or Mr. Gaynor to use those certificates wherever they thought proper and right? A. They had the right to use them wherever they wanted to.

By Mr. Roderick:

Q. Mr. Gaynor was not a member of the Republican general committee, but was on our ticket? A. He was a Democrat, sure.

Q. Did you think you had the power to authorize him to appoint watchers in any district he was running in, in the several counties of the State? A. I merely say that as far as the president of the Republican general committee was concerned, he had no more power to remove a watcher in any election district, except in his own ward, if he happened to be an executive member, than I had to go and fill a ballot-box full of ballots. The only man that could remove a watcher was the captain of that election district. The by-laws of the Republican general committee are peculiar. They make the captain of the election district the judge; and he has the power to



remove any election officer, or any watcher, or any worker, in the interest of the party if he thinks he is not doing right.

David P. Watkins, duly sworn for contestees, testified as follows:

By Mr. Roderick:

Q. Were you the secretary of the executive committee of the Kings county Republican general committee during the last campaign? A. No; I was the clerk of the general committee.

Q. Are you the same Mr. Watkins whom the last witness referred to? A. Yes.

Q. And you signed the chairman's name, at his request, to 600 and odd certificates of watchers that were issued in the county of Kings? A. He authorized me to have his name signed; I had two clerks, and we signed 3,000 certificates.

Q. You had clerks to do it under your supervision? A. Yes.

Q. You saw these twelve certificates that were used by the watchers in the town of Gravesend, and which are attached to the affidavits in evidence? A. Yes.

Q. And you have identified them several times? A. Yes.

Q. Are those the certificates that you issued to the executive members of the town of Gravesend; to Mr. Stratton? A. Yes; that is not Sheriff Buttlings' signature.

Q. But that is a signature which you authorized? A. Yes; it is signed by a man from the Seventeenth Ward.

Q. All the certificates were signed in that way? That is, signed by some one other than Mr. Buttlings, that were used on election day? A. Yes.

Q. Did you have charge of the district election paraphernalia and watchers' certificates sent to the executive members of the different wards of the towns in the county of Kings in the last campaign? A. Yes.

Q. State your manner of distributing them; state how they were made up, and how they were issued to each ward or town? A. The ballots are made up by the printer and sent to headquarters, all done up in packages. Then the different candidates sent their matter there, and that was put with each package for each ward or town. Each executive member had an order from the secretary of the campaign committee to come there on the Monday before election and get whatever belonged to the different wards or towns. With those packages was the watchers' certificates and all the paraphernalia required for the election, except the books issued by the election officers.

Q. How many watchers' certificates did you put in each? A.

They could get as many as they wanted, but with the understanding — or as I told them — “You can have as many as you want, but you can only use one for each district.” There are fifteen districts, and they could have thirty, forty or fifty certificates.

Q. But they are limited to two watchers in each district? A. Yes.

Q. But you issued enough, so that in case they lost any, or a watcher did not show up after he was appointed, they could appoint another? A. Yes.

Cross-examination by Mr. Kiendl:

Q. Do you know anything about the certificates that were issued by Mr. Buttling to Mr. Johnson? A. No; I do not know anything about it. I was away at that time.

Q. Those are signed, all of them, in a similar manner to these which you have mentioned? A. Yes; I handed those to each executive member.

Anson M. Stratton, duly sworn for contestees, testified as follows:

By Mr. Roderick:

Q. Where do you reside? A. Coney Island.

Q. Were you a member of the executive committee of the Kings county Republican general committee during the year 1893? A. Yes.

Q. How long have you been a member of that general committee? A. I think for two years.

Q. It was a reorganized committee, was it not? A. Yes.

Q. How long have you been connected with the general committee of the Republican party here in this county? A. I have been voting the Republican ticket for five or six years.

Q. Here in the county? A. In the county.

Q. Did you, during the last campaign and shortly before the election, receive from Mr. Watkins, the last witness, the election paraphernalia and watchers' certificates for the town of Gravesend? A. Yes.

Q. When was it you received them? A. I think it was about eleven o'clock in the morning of the day before election.

Q. That was Monday? A. Yes.

Q. What did you do with reference to the appointment of Republican watchers there at the time? A. I received a letter stating the papers were ready; and I went down there and received them from the headquarters in Lawrence street; took them down to Gravesend,

and left them in the office of Captain Williams. He was not in. Then I got my son to drive me down to the Island, and I took lunch there, and took a train back in the afternoon, and found the captain there.

Q. What, if anything, did you and the captain do with reference to filling in the certificates? A. They were all filled in from the rolls; and then he signed them.

Q. From what rolls? A. Of the Republican town association.

Q. You selected the names from those rolls? A. Yes.

Q. And filled them in the certificates? A. Yes; and then signed them as president and executive member.

Q. And sent them to the watchers that were appointed? A. My impression is that Captain Williams served most of them personally.

Q. You have identified the twelve certificates which are in evidence here, attached to the affidavits of the Republican watchers, in the several proceedings? A. Yes.

Q. You know that those are the certificates that you so signed? A. Yes; that is correct.

Q. Were you at the election at Gravesend on the last election day? A. Yes.

Q. I mean during the general election? A. Yes.

Q. What time did you get there, in the morning? A. I can't exactly tell you what time it was. I know it was soon after the polls were opened. It might have been eight o'clock.

Q. How long did you stay there? A. I remained there until about five o'clock.

Q. Were you at the polls all day long? A. All day long.

Q. Was Captain Williams there during the time? A. Yes.

Q. Did you try to conduct the election on behalf of the Republican party down there? A. That is what I was there for.

Q. Did the watchers perform their duties as watchers?

Mr. Kiendl — Not how they performed, but what he saw.

Q. Did you look to see if the watchers were there performing their duties?

Mr. Kiendl — I object to that.

The Chairman — The question is whether he saw the watchers there.

A. I saw them at different hours during the entire day.

Q. You were in the different polling places, were you? A. I went there when I reached there to see if they were there; and then at different times during the day I looked after them.

Q. How long have you lived in the town of Gravesend? A. For about ten years, in the summer season.

Q. In the winter you live in the city? A. I live in Garfield place.

Q. Your legal residence is in the town of Gravesend? A. Yes.

Q. Do you carry on business in the town of Gravesend? A. No, sir.

Q. But you are interested in real estate there? A. Yes.

Q. That is, you rent real estate out to tenants who use it during the summer time? A. Yes; and in the winter, too.

Q. You were in business down there? A. Yes; for seven or eight years.

Q. You employed a great many people during that time? A. Yes, probably from fifty to a hundred during the summer season.

Q. What district do you live in? A. The third.

Q. And that is the district you voted in? A. Yes.

Q. Are you familiar with the residences of the voting population of the second and third districts of the town of Gravesend? A. Yes, fairly well.

Q. How many elections have you attended there at the town hall in the town of Gravesend? A. I don't think I have missed one since I lived there.

Q. And that is how many years? A. Ten years.

Q. Do you know whether or not there is a large vote in the second and third districts of the town of Gravesend? A. There is.

Q. And has been for a number of years? A. It has been increasing very rapidly.

Q. State to the committee the cause of that increase in those particular districts? A. The increased facilities for accommodating them; the increased number of buildings during the past two or three years. Prior to that time there was not accommodation for a large number of people in the second district, but during the past three years there have been a great many new buildings erected.

Q. Coney Island is in the second and third districts of the town of Gravesend? A. Yes.

Q. And during the summer time there is a large amount of business carried on at Coney Island, such as music halls, shows, refreshment rooms and hotels? A. Yes.

Q. That is so? A. Yes.

Q. And there are a great many visitors there during the summer season? A. Yes.

Q. About how many would you say were there? A. I understand from the statistics that there was about 8,000,000 there last summer.

Q. How many are employed there as helpers on Coney Island during the summer season—I mean, taking in the large hotels, the small hotels, and all those shows and places of amusement?

A. I cannot any more than guess at that; and I will guess at from five to ten thousand.

Q. A large number? A. Yes.

Q. Do they bring their families down with them as a rule, or are they without families? A. Most of the waiters have no families.

Q. And they stay there until what time? A. They usually stay until after election; some of them do go away before.

Q. And the following year the same number are helpers there again? A. Yes.

Q. Are they the same people, or is there generally a change, as at other watering places? A. I do not think there is as much of a change there as there is at other watering places, for the simple fact that there is a very large amount of business there and they can always get work.

Q. And those people that are employed there during the summer, and who stay until after the election, register and vote down there, do they? A. As a rule, yes.

Cross-examination by Mr. Kiendl:

Q. You are in Coney Island every summer, are you not? A. Yes.

Q. At about what time in the summer do you usually go down there? A. My family usually go down there the latter part of May and return again to the city the last of September.

Q. Do you do that every year? A. Yes.

Q. And you have done that every year for the last ten years or more? A. I think I stayed there one winter until December.

Q. You did not go to any other place then during that time? A. I have not been to any watering place for ten years except Coney Island.

Q. You know nothing about any other watering place except Coney Island? A. Yes; I do.

Q. Is it the fact that you have been on Coney Island from the time the season opened until it closed? A. I have been going to watering places ever since I was a boy, but during the last ten years I have not—only to Coney Island.

Q. On election day you say you were at the polls from the opening of the polls until the close? A. Until about five o'clock.

Q. You were at the various polling places during that time? A. Yes.

Q. In and out? A. I was in as much as out; I would look in

to see if everything was going on right; but I did not go away from the polling place from the time I first got there until I left; not even to get dinner; once went away to get a cigar.

Q. Your politics are Republican? A. They have been for five or six years past; I have voted the straight Republican ticket.

Q. And with all the vigilance you could give to it, and being there all day long, the vote the Republican ticket polled in the Second district was but ten; is that right? A. In the second district, yes.

Q. Do you say that you had a regular organization there? A. There was no regular organization in the second district.

Q. But there is in the town? A. Yes.

Q. The Republican organization is known as the Republican organization of the town of Gravesend, or was at that time? A. Yes.

Q. You have never made any canvass of the vote of the second district, have you? A. No, sir.

Q. A great many of these people that you speak of, who are waiters, and so forth, are transient people, are they not? A. Transient people? A man is not a transient who is a voter; there are some who come there —

Q. Don't you know that there are some who will come there and work for a day, or a week, and then go away and get other work for a short time, and then come back again? A. Yes; in some cases.

Q. Don't you know as a fact that there are a great many such? A. No, sir; I don't know any such thing.

Q. Then according to your idea there must have been in the neighborhood of 10,000 voters in the second district? A. No; I did not say so; plenty comes there that is not entitled to vote.

Q. Do you say you never made a canvass of the number of voters? A. I never have, but I know from the number of people I have rented places to, and from the number of people I have had in my employ.

Q. Is it not the fact that most of the people leave there about the end of September? A. There are some that go away in the latter part or middle of September, and in October; but many of them return again to vote.

Q. Is it not the fact that most of the hotels are closed at the end of September? A. Yes.

Q. And then all the help leave, do they not; except the few who take care of the buildings? A. They do leave and get employment elsewhere, but come back there and vote — many of them.

Q. Many of them? A. Yes.

Q. But many of them do not? A. Yes; there is a good many that don't come back.

Q. Have you ever made the canvass to see how many increased voters there have been in any election district in the town of Gravesend in the last two years? A. No; I could not tell.

Q. You were in the town at the last spring election, were you not? A. Yes.

Q. Do you know how much the total vote was, which was cast at the last spring election? A. I think it was about 2,000, but it is only an opinion; that is my recollection.

Q. Was there any excitement at that election? A. Well, yes, there was a little excitement; as much excitement as I ever saw at any election there; though the elections are, as a rule, quiet as this meeting is here to-day.

Q. But as matter of fact this last election was a little more exciting than any previous election? A. I think so; yes.

Q. Both parties did all they could to bring out a full vote, did they not? A. There is no doubt about that.

Q. You were quite active in the campaign yourself? A. I was very active, indeed.

Q. You made a great many speeches, and did a great deal of work? A. Not a great many, but I made some.

Q. You did a great deal of work? A. For the Republican party; yes.

•Q. Did you witness the canvassing of the vote? A. No, sir.

Q. You know nothing about that? A. No, sir.

Q. You are aware, are you not, that since election the election officers in that town, in all the districts, have been tried or pleaded guilty or rather they pleaded to indictments of fraud at the election held in November, 1893? A. I understand that Kenny Sutherland has acknowledged to committing fraud, but whether he has or not I don't know nothing about it.

Q. And you know of others who have also confessed? A. No; I don't.

Q. Don't you know that they are serving terms in the penitentiary?

Mr. Roderick — I object to that as immaterial and irrelevant.

The Witness — I know there were quite a number who were sentenced, who pleaded guilty.

The Chairman — On cross-examination we will permit that to be asked.

Q. You know that the trouble was over this election held in November, 1893, do you not? A. Yes.

Q. You also know that all of them, except those that have died, are now serving terms in the jail or penitentiary?

Objected to as immaterial. Objection overruled.

A. I know it from reading it in the papers; that is all; but the papers don't always tell the truth.

By the Chairman:

Q. That is the only personal knowledge you have about it? A. That is all; yes.

By Mr. Kiendl:

Q. Do you know that the statement made by Mr. Sutherland at the time that he was sentenced, was that there was no practical difference between the Republican and the Democratic party in the town of Gravesend? A. I would not believe Mr. Sutherland under oath if I heard him swear to that.

Mr. Kiendl — I move to strike that out as not responsive.

The Chairman — That is out, it is not responsive. The witness will answer the question.

The Witness — I did not know that he said it; if he did I think he lied, as far as I am personally concerned.

Mr. Kiendl — I move to strike that out as a voluntary statement of the witness.

The Chairman — The motion is granted.

By Mr. Glendinning:

Q. Do you know the reason why the Republican vote is much smaller than the Democratic vote in the town of Gravesend? A. I could only give you my idea; my idea is that the Republican party is on the wrong side of the excise question; and because nearly every person there is interested, directly or indirectly, in the sale of intoxicants of some kind.

By Mr. Gibney:

Q. How many election districts are there in Coney Island? A. Six.

Q. Do you recollect the total vote in 1893 — about? A. I think that the returns showed something over 3,000.

Q. And you say that there were 2,000 votes in the spring elec-



tion? A. Yes; that was the largest spring election they ever had there; the spring election is always a great deal smaller than the fall election.

Q. How do you account for the additional thousand votes between the spring and the fall? A. I suppose there are many from the interior of the town that have an extra interest in it; that is to say, men that never left their farms or places to vote before voted then; I know that I heard Mr. Bateman say that he had not voted in twenty years, but that he should vote then; and I suppose he did.

Q. But how do you account for the extra 1,000 votes cast in the fall election over the spring election? A. Because in the summer there are many who come there to work, and they are registered from where they work; during the winter time they go somewhere else, and they are not back again, or some of them stay away; but some return in the spring again.

Q. That is your reason for it? A. Yes; and then there is not the same interest in the spring election that there is in the fall election; not the same inducement for people to come from New York, if they are temporarily at work there, and return to the town for the purpose of voting; some do and some do not.

Q. Of your own knowledge, do you know of any frauds committed there last fall? A. Of my own knowledge, none.

Q. And you were there all day? A. I was there all day.

Q. And you saw none? A. I saw none, and heard no complaints; I was there and had a badge of office, and was around in front of the building all day long; I was there soon after the polls opened, and remained until about five o'clock; but did not hear the first man; I saw Mr. Friday, the Member of Assembly, there; and he said that, so far as he could see, it was as fair an election as he ever saw in his life.

By Mr. Kiendl:

Q. You know it to be a fact that Mr. Sutherland made a statement, stating that there was fraud? A. I don't know it as a fact.

Q. You do know that he made a statement? A. I read in the papers that he did.

Q. Do you believe that statement to be true, if he made such a statement?

Mr. Roderick — That is objected to.

The Chairman — He may answer.

NO

By Mr. Gibney:

Q. That is, that he voted 400 tickets and 200 tickets? A. Knowing the character of the man as well as I do, I do not believe it.

Q. You do not believe that statement? A. I do not believe him; it is possible it was so and I not know it.

By the Chairman:

Q. You say there is a large number of people who go down there in the spring to find employment? A. Yes.

Q. What is the principal employment of those people? A. Waiters, bartenders, cashiers, cooks and assistants principally.

Q. You spoke of the accommodations for people in the second district having increased; for what class of people have accommodations increased in the second district? A. For the very class I speak of; for instance, in one section there is a hotel, and various buildings, 750 feet wide, on Surf avenue, running to the ocean.

Q. And those hotels are open about what time of the year? A. They are opened along in April, May and the first of June.

Q. They are open from April until June? A. Yes.

Q. When do they close? A. They close, a great many of them, the last of September; some never close, but keep open the year around; there is probably twenty times as many there now that keep open the year round, as there was three or four years ago.

Q. What proportion of the entire number keep open the year round? A. I should say about one-fifth.

Q. And four-fifths are closed in the fall and do not open again until the following spring? A. Yes.

By Mr. Gibney:

Q. Would you say that there are 10,000 employees who come there? A. Yes; I would not be surprised if there were so many.

Q. Do you include the females in that? A. Some young people say that there are many females who come there.

Q. But when you say that there are 10,000 people who come there and make up this extra vote, do you include the females in that number? A. No; just the males.

Q. You think that 10,000 males come there every year to assist in the work as you have stated? A. Yes.

Q. And that accounts for this extra vote? A. Yes; that would account for it; there might not be 10,000 who come there every summer.

Q. Is that about the annual vote — 3,000? A. No; the vote has increased every year since I have been there; and so has the

business, and the number of buildings; out of 108 buildings that now stand on one strip of ground 750 feet wide, ninety-eight are new within three years.

Q. All used for hotel purposes, and for drinking purposes? A. Yes; I don't think there is more than two private houses in the lot of them.

By the Chairman:

Q. The increase of buildings in the second district, which you have mentioned, has been an increase of buildings of this character — hotels, saloons, and places of that sort? A. Yes.

Q. Places for the entertainment of the people who come down there to visit Coney Island in the summer? A. Almost exclusively; there are, of course, a number of private houses built, but the number is very small in proportion; I don't think it would average three per cent.

By Mr. Kiendl:

Q. You are very friendly with McKane, are you not? A. Yes; I have always been.

Q. And have been for years? A. Yes.

Q. That is, for all of the ten years you have resided there? A. Yes; and before that.

Q. And you are to-day? A. I am to-day; yes, sir.

Q. For the increase of votes that you have mentioned, is there any other reason you can give — for that increase of vote between the fall election and the spring election — except that which you have already stated to the committee? A. The increase of votes of the fall election over the spring? Nothing more than what I have stated, the increased interest that they take in it.

Q. I understood you to say that you have, in your canvass during the last election, come across people who came out to vote, old residents of the town, who had not voted for many years? A. I heard Mr. Bateman say so.

Q. And the interest shown in the last election was quite exciting, and quite considerable? A. For a spring election, yes; remarkably so.

Q. Was there not equally as much excitement in the spring election as there was in the fall election? A. I think there was, through the town.

Q. Don't you know, as matter of fact, that there was more? A. No; well, I guess may be there was by the people who resided in the town; yes.



Q. Don't you know, as matter of fact, that every effort was made to bring out every vote at that election? A. I guess there was a good many that would not come out at that.

Q. You have answered that there is, practically, hardly any Republican vote in the town; is that true? A. I don't think there is many Republicans in the town.

Q. And you have stated to the committee that the reason for that is the excise question? A. I think so.

Q. How do you account for the fact that Mr. Harrison got so many thousand votes more than his opponent? A. Simply because the Republican general committee threw out the Democratic general committee; turned all the Democrats out, and all voted for the Republicans; they turned me out with the rest.

Q. They had no excise question in issue at that time? A. No; that feeling surmounted the excise question.

Q. Has not that frequently been the case—that one or more Republicans were elected; that, notwithstanding the fact of the position of the Republican party on the excise question, the Republican candidate was elected? A. There has been, of course, Republicans elected there.

Q. And by a large vote in the town of Gravesend? A. Yes; and indorsed by the Democratic Association.

Q. So that when Sutherland made the statement that there was practically no difference in the town of Gravesend between the Democrats and the Republicans; he told the truth, did he not? A. He did not.

Q. In a qualified sense? A. He did not tell the truth in my judgment.

Q. Notwithstanding the fact, however, that there have been a number of cases within your recollection where Republicans have been defeated and Democrats defeated by a large vote in the town of Gravesend? A. That is right; notwithstanding all that.

By Mr. Roderick:

Q. You say there was a large vote cast for Mr. Harrison when he ran for president the first time? A. Yes.

Q. That was because the entire organization down there voted the Republican ticket, was it not? A. It was all the ticket there was for us; the Democrats were all turned out; I with the rest of them.

Q. Then the last time that Mr. Harrison ran the vote was just the other way, was it not? A. Yes.

Q. When there is not any party issue there, there is very few Republicans in town? A. Very few, indeed.

Q. Just a few hundred? A. Very few.

Q. You did not hear Mr. Kiendl complain any when Harrison got the votes down there, did you? A. No; I thought they all enjoyed it very much.

By the Chairman:

Q. What business do you say you were engaged in? A. No business; retired.

Q. You own real estate on Coney Island? A. I own a number of buildings there — and so do my wife and son.

Q. Those buildings are used for hotel purposes, I suppose? A. Yes; as a rule.

Q. The people who occupy those houses do not as a general rule own the houses which they occupy, but rent them? A. I should suppose that about one-third of them own them, and the other two-thirds are owned by the owners of the property.

Q. When you speak of the "owners of the property" you mean the owners of the real estate? A. Yes; of the fee.

Q. And those who own the buildings have built them on real estate which is leased? A. Yes.

Q. What is the usual term of the lease of property of that sort down there — where the lessee builds the structure? A. Do you mean as to the payment of rent?

Q. No; how long a lease is given? A. For five or ten years.

Q. On a lease for five or ten years the tenant erects the structure which he uses? A. He erects the structure, and at the expiration of the lease, in some cases, they have the right of renewal, and in all cases, so far as I am concerned, they have the right to remove them at the end of their lease.

Q. Are there many cases where the occupant of the building owns the fee of the ground on which the building stands? A. Yes.

Q. Did I understand you to say that one-third of them do? A. No; I did not answer your question in that way; I mean to say this, that there are about one-third of the parties who build houses there who own the buildings, and the other two-thirds hire the buildings; but there are a great many there who own the land and the buildings both.

Q. What proportion would you say of the people who occupy buildings for such purposes own both the land and the building? A. Very small — that is, of those that are engaged in business.

— Q. The leases made by those who own the land and the buildings,

and who lease the property — the land and building for such uses — what is the usual duration of leases of that character? A. All the way from one to five or ten years.

Q. What is the general average? A. I think from three to five years; many of them only hire for one year, but I think the average would be from three to five years; I don't know that I ever refused to give a tenant the privilege of three or five years, if they wanted it; I prefer to do that rather than give a five years' lease.

By Mr. Kiendl:

Q. Most of these buildings which you have mentioned in the second district are used for concert halls, concert gardens, and the like, are they not? A. No; very few are used for that purpose; probably not more than half a dozen for that particular purpose; the most of them are rooms over stores, and bar-rooms down.

Q. Do I understand you in your answer to mean that the district known as the Bowery is not full of such character of houses as concert halls and concert gardens? A. I do mean to say that the most of them, probably not more than ten per cent, may be not more than five per cent, are used as concert halls.

Q. But there are a great many, are there not, in that district? A. There are probably a dozen.

Q. Are there not a great many other larger concert halls? A. I am talking about large concert halls; there is no small ones that I know of — unless you would call a bar-room, or a room in which there is a piano, a concert hall; I call it a bar-room.

Q. I call anything a concert hall that has amusement — music and entertainment in it — anything for amusement? A. About twenty-five per cent.

Q. Are not a great many of those buildings that you have mentioned used for bath-house purposes? A. No, sir.

Q. None of them? A. There has been, I think, only three bath-houses built there within three years.

Q. There are a great many of the buildings in the second district that are bath-houses? A. No; there are not.

Q. What district are they situated in? A. All there is on the Island, or pretty much all, are in the second district.

Q. Are there no large bath-houses in that district? A. There is some large ones.

Q. How many lots does the largest one there cover? A. The largest bathing establishment? — I could only guess at it; I would guess about ten lots; there are plenty that have more lots con-

nected with them; for instance, Mr. Henderson has two there that has a large tract of ground north of them.

Q. Used for bath-house purposes? A. For bath-house purposes exclusively.

Q. Most of these buildings that you have mentioned are such that they could be removed; they are built on spiles, are they not?

A. The most of them are built on spiles, because it is the best foundation they can get there.

George Smith, duly sworn for contestees, testified as follows:

By Mr. Glendinning:

Q. Where do you live A. Parkville, Twenty-ninth Ward, formerly the town of Flatbush.

Q. How long have you lived there? A. For twelve years.

Q. Do you hold any official position in the town? A. Not now.

Q. Did you in 1893? A. I was constable of the town in 1893, and town clerk in 1894.

Q. Were you present at the election held in April, 1893? A. Yes.

Q. Did you attend the election all day? A. From about a quarter of five in the morning until sunset, when the votes were counted.

Q. How many tickets were in the field? A. We had three election tickets—the Democratic ticket, the Republican ticket the Independent ticket, besides the Appropriation ticket.

Q. What candidates were running? A. Democratic ticket for justice of the peace; an independent ticket for justice of the peace; a Republican ticket for justice of the peace, and the Appropriation ticket.

Q. Were inspectors elected? A. I don't think we elected anybody but a justice of the peace in the spring election.

Q. You say that you attended the election all day? A. Yes.

Q. Do you know how many votes were cast at that election? A. 1,685, I think.

Q. How was the election conducted—under the new ballot reform law? A. Yes.

Q. That is, each voter had to take his ticket and go into a booth and fold it? A. Yes; fold four tickets—or three tickets and the Appropriation ticket.

Q. How was it conducted? A. We voted the same as we voted in the fall.

Mr. Kiendl—I move to strike out that answer as being a conclusion.

The Chairman — You must not state conclusions, but state what was done.

Q. How was that election conducted — the spring election?

A. The same as it was in the fall.

Q. Describe it? A. A man would come up to the justice of the peace, who acted as inspector of election, and give his name, and they would hand him four sets of tickets, and he would go into the booth and fold his ticket, and come back, hand it back to the justice again, call out his name, and go off about his business.

Q. During the day was there at any time a great crowd of voters waiting to vote? A. When the polls opened at sunrise we did not have many people there, but towards a quarter to seven we had about fifty or seventy-five, and that was more than we had all day after that.

Q. There was no great crowd in line?

Mr. Kiendl — That is objected to as leading.

The Chairman — He may answer that question.

A. There was no great crowd.

Q. There was no hurry or push about it, was there? A. No.

Q. They conducted it in the ordinary way? A. They had plenty of time all day to vote.

Q. Could they have voted a great many more tickets than were voted? A. Yes; I guess they could have voted 300 more.

Cross-examination by Mr. Kiendl:

Q. Do you say that they were the same election booths which you had had at the general election? Is that the fact? A. Yes.

Q. Don't you know as a matter of fact that you had twenty-five or thirty booths? A. They were the same as we had in the fall election.

Q. They were the same, but were they the same in number?

A. In the fall we voted in our own district; and we stored them all away in the town hall, and put them up for the spring election.

Q. You used the same number of booths you had for the whole eight districts, did you not? A. No; I don't think so; we did not have use for all of them.

Q. But you did have a great many more than you did in any one district in the general election? A. Yes.

Q. And you had eight registry clerks, did you not — one for each district? A. I don't know as you would call them registry clerks; I think they were poll clerks.

Q. But there were eight of them, and each had a book? A. The



town clerk had given that morning those eight men who were to act that day one book for each district.

Q. And there were eight men there for that purpose? A. Yes.

Q. You had a room as large as this, or larger? A. Yes; the town hall.

Q. And all the election officers were in that one room? A. Yes.

Q. And the booths, also? A. Yes.

Q. And you say that one candidate only was voted for — a justice of the peace? A. I think that is all we voted for on that day.

Q. And you say there was no line of voters there during the day? A. Only before seven o'clock in the morning; the rest of the day we could sit on the town hall steps and take it easy for the day.

By the Chairman:

At the fall election how many districts had their polling places inside this same building? A. Only one — the second election district.

By Mr. Roderick:

Q. You are not certain about the number of officers that were voted for at that election, are you? A. I think that is all that was elected — a justice of the peace.

Q. Don't you know that you had to elect inspectors at that election? A. I don't think we elected them in the spring.

Q. You don't recollect what the ticket was, do you? A. Yes; I had quite an interest in the election, and I am positive we only elected a supervisor.

Q. That was the principal office? A. Yes; not a supervisor, but a justice of the peace.

Q. And no excise commissioner? A. I do not think so.

Q. No highway commissioner? A. I am positive we did not elect a highway commissioner; I don't think we elected anybody but a justice of the peace.

Q. No town auditor? A. I don't think so.

Q. And no assessor? A. I think not.

Q. The ticket will show who was elected? A. Yes; the ticket will show that it was a justice of the peace.

Q. But there were four different election tickets that had to be polled? A. Yes, four.

Q. And instead of having one registry book there were eight registry books? A. Yes; one from each of the eight election districts.

Q. They had to search for the name of each voter before he could vote? A. Yes.

Mr. Roderick — I understand that the whole of this original record is in evidence — that is, all of the original papers in the contempt proceedings.

The Chairman — We so understand.

Mr. Roderick — We have no desire to prolong this matter, except to raise the issue — which can be raised upon the testimony already in. I am only interested in one section of the district, and that is the town of Gravesend. Those who are interested in Richmond county have not appeared here. I expected they would be here; and they thought that they would take up some days with the testimony. My advice was to cut the matter as short as possible; and you will see that I have called a very few witnesses. I have called simply those I was obliged to call in order to show that the Republican watchers were appointed in the usual way; and that these certificates which are in evidence were genuine certificates; and to show that a certain number of votes could be cast in a given time. I do not propose to go into all this testimony that was gone into by the Senate and Assembly committees. It is tiresome to the committee, and it befogs the real issue, and strings the thing along interminably. We want to get at a decision in the matter; and I do not propose, unless it is, perhaps, some little matter of documentary proof, to put in anything more, as far as I am personally concerned. I would suggest to the committee that the matter be adjourned over, so that if the Richmond county people have any evidence to put in they can put it in; if not, the case is practically closed now. I do not know whether they have any evidence or not. I shall go to Albany to-night, and see them, and tell them the situation of affairs. It may not be necessary for the committee to come down here again; but I would not have the case closed so as to preclude them from putting in anything they might find necessary. My desire is to cut the matter short. There is no desire on my part to extend this contest. It is with the view of saving the time of the committee that I make this suggestion. After we see them at Albany we may learn that they have not any evidence to offer, and the case may be practically closed. If it is simply documentary evidence, we can introduce it up there.

The Chairman — Then the committee understand that you have no further evidence to offer.

Mr. Roderick — I have none now. I have no oral testimony; it may be that I shall offer some documentary evidence. I have not

looked over the minutes so far. I might want to make some motion to strike out, but that can be done in Albany as well as here.

The Chairman — Any motion of that sort can be addressed to the committee on the argument of the case.

Mr. Roderick — As I say, it might be that the delegation from Richmond county will have no evidence to offer.

The Chairman — If they should desire to introduce any evidence, they can make the application to the committee at Albany.

Mr. Roderick — I would not like to have the committee declare the matter formally closed, but would like them to have an opportunity to introduce evidence if they desire to do so. I don't know that they have any to offer.

The Chairman — That application will necessarily have to be made to the general committee. This committee set down this matter for the taking of testimony, and gave fair notice to the contestees, and have been here, and are now here, for the purpose of taking any testimony they may wish to offer. If any of the parties who wish to introduce evidence have not prepared themselves for that purpose to-day, it will be necessary for them to bring the matter to the attention of the general committee. This committee feels that it has concluded its labors in the case, unless it shall be otherwise directed by the general committee.

Mr. Roderick — That is, the committee considers that the case is closed.

The Chairman — Yes; with the exception of the introduction of the documentary evidence you have spoken of, or any motions which you have or may make.

Mr. Roderick — Or, if it is a short witness, I will produce him in Albany.

Mr. Gibney — Before we make our report?

Mr. Roderick — Yes. When it will be agreeable for us to appear before the sub-committee? I suppose we can do that some time in Albany.

The Chairman — We cannot make any appointment for the general committee. The general committee will have to make its own appointment for the final disposition of this case; and they will doubtless do so and notify counsel.

Mr. Roderick — I mean as far as the control of this record is concerned. I suppose it will be first passed upon by the sub-committee and then reported to the full committee. When will it be

agreeable to this committee at Albany to hear any motions we may wish to make as to the striking out of matters from the record.

The Chairman — Those motions, I think, had better be made to the general committee.

Mr. Gibney — Will you be in Albany to-morrow?

Mr. Roderick — Yes; I am going up to-night, and will be there Thursday and Friday.

Mr. Gibney — The sub-committee will be there then, and any motion you may want to make can be arranged for.

Mr. Kiendl — If any motion is to be made, it seems to me it ought to be made on notice.

The Chairman — You have not entirely closed your case? You have some documentary evidence yet to offer?

Mr. Kiendl — Only the certificate of the Secretary of State.

The Chairman — All that evidence ought to be in before we make our report to the general committee. I think we had better now arrange upon some time for hearing at Albany when you can put in that documentary evidence, and when these motions can be made and disposed of.

Mr. Kiendl — For the purpose of handing in documentary evidence and summing up the case?

The Chairman — The summing up will be heard by the general committee?

Mr. Gibney — We simply report to the general committee the testimony we have taken.

The Chairman — All the arguments based upon that testimony must be addressed to the general committee?

Mr. Gibney — If you wish to make any appointment we can make it now.

Mr. Kiendl — I would like to have the time fixed now.

The Chairman — We think if we set the matter down for Friday at eleven o'clock, at the committee room, in the Capitol, at Albany, it will be a reasonable accommodation to parties on both sides, and will expedite the determination of the matter. The committee would like to make their report to the general committee before next Wednesday.

Mr. Roderick — Notwithstanding the desire of the committee to put in their report by Wednesday, I think the committee in fairness to us should understand that we have had only yesterday and to-day

in this matter; and that I am cutting it very short. I think that a few days' indulgence should be given; and I think it is rather undue haste to appoint the hearing for Friday.

The Chairman — The committee gave notice a fortnight ago that it would expect all the testimony on the part of the contestees to be ready at this time. They came down here this week and found that nothing had been done, that no subpoenas had been taken out, and no notice had been taken of the notice that had been given by the committee. They adjourned over until this morning to give an opportunity for this evidence to be introduced. If there are any gentlemen who are interested in the contest, who have abandoned it, and have gone off and taken no account of their duties in connection with it, the committee are not responsible for that. We think that it will afford ample time for the contestees to obtain proof if we set this matter down for Friday next. If there are any documents that you cannot get within that time, you can then make it known, and we will take such action at that time as the necessities of the case seem to demand.

Mr. Roderick — Since the statement of the Chairman has been taken down by the stenographer, I wish to say that nobody has abandoned this contest. The members from Richmond county are not here for the reason that they are attending the Convention; and they supposed that the taking of testimony on behalf of the contestants would take the balance of this week. That is the reason they are not here. I am simply asking that we may have a chance to consult with them before closing our case. The session yesterday was taken up by the testimony for the contestants, and then there was simply an adjournment over until this morning. I have shortened the matter on our side as much as possible. I did not bring in a great number of witnesses. If we had desired delay we could have subpoenaed three or four hundred witnesses. But we are not after delay in the matter. We are after a legal decision. I do not think it is treating us properly to refuse us a couple of days. I do not think that fairness is shown to our side of the case. There seems to be a great hurry to get a report.

The Chairman — We think, in view of the statement made at the last hearing, that it was due to the committee that the members from Richmond county should have been here at this time if they desired to introduce evidence.

We will adjourn this matter for further hearing until Friday next, at 11.30 in the forenoon, at the rooms of the Committee on Privileges and Elections, in the Capitol, in the city of Albany.

PROCEEDINGS.

AT THE CAPITOL,  
ALBANY, N. Y., *June 15, 1894.*

Present — Chairman Lester and Mr. Gibney, of the committee.

Mr. Kiendl appeared for the contestants.

Messrs. Curran, Mullen, Roderick, Fitzgerald and Riggs for the contestees.

Mr. Kiendl offered in evidence a certified copy of the certificate of election, certified by the Secretary of State; also a certified copy of the indictment, plea and conviction in the case of Kenneth F. Sutherland.

Mr. Mullen — We object to that.

Mr. Kiendl — It has been already introduced, Mr. Chairman. Certified copy of indictment marked Exhibit No. 1, of this date, H. A. B. Certified copy in certificate of election marked Exhibit No. 2, of this date, H. A. B.

Chairman Lester — We will adjourn this proceeding until Thursday afternoon next, at three o'clock, at this place, for the purpose of giving the contestees an opportunity to read the evidence which has been taken, and then introduce any documentary evidence they may see fit in closing their case; and if they have any witnesses whom they think it necessary to swear and examine, they must subpoena such witnesses to be present here at the time and place specified, in order that the committee may then close the evidence in the case, and be prepared to submit their report to the general committee.

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PROCEEDINGS.

AT THE CAPITOL,  
ALBANY, N. Y., *June 21, 1894.*

Present — All the committee.

Mr. Kiendl appeared for the contestants.

Mr. Mullen, Mr. Roderick, Mr. Curran, Mr. Gibbs and Mr. Glendinning, for the contestees.

Mr. Mullen — If the committee please, I expect our counsel here, but so that you will not be unnecessarily delayed, I think I am capable of offering the proof that is to be offered to-day, and to facilitate matters, I will state briefly what I propose to offer

here to-day. I have examined the testimony given by Louis Philips, who was counsel in the proceeding on the relation of Howard R. Bayne to strike some names from the poll-list in the fifth district of the town of Castleton, and he stated what had been done by the court upon that application. He did not produce any of the original papers, nor did he produce copies of the papers in the proceedings. After reading that testimony I sent one of my clerks to see Mr. Philips and to see Mr. Shaw, who was the attorney of record, Mr. Philips being counsel, to see if they could furnish me with the papers used upon that application. Mr. Philips sent back word that the papers used upon that application had been furnished to Judge Cullen during the trial of certain election indictments in Richmond, and that those papers had not been returned, but that he found among his papers a copy of the answering affidavits I had served upon him on that application, together with the affidavit of the relator, Howard R. Bayne, and the affidavit of himself used upon that application; but the affidavits of two others, who are referred to in all these affidavits, and the substance of what they testified to in the affidavits are contained in these affidavits, could not be found. My time being limited I took those copies with me and have brought them here, and I desire to state further to the committee that I was anxious to get an extract from the minutes of the proceedings had before Judge Cullen at Oyer and Terminer, on the trial of the People against Hughs and others, for ejecting a watcher from the fourth district of the town of Southfield. That came up in this way: Philips in his testimony stated that he did not arrive in court in time to hear the pleas of guilty interposed by other defendants, which I will mention later on, nor to hear the verdict rendered by the jury in the Hughs case. So I went to the stenographer in Goshen, asking him if he would not send me a copy of the minutes as to what occurred generally on the coming in of the jury in the Hughs case, and upon the pleas made by the other defendants in the other cases; and I received this letter from him, which I will leave with the committee, if there is no objection, stating that he is engaged at the Oyer and Terminer and Circuit in Goshen, Orange county, and that he had not his minutes with him, and it would take a long time for him to make up the extracts I desired, and he regretted very much his inability to do so, stating his reasons therefor. Now, I propose, if it meets with the approval of the committee, and is not objected to by the other side, to offer in evidence these copies of affidavits which I received on Tuesday last from Mr. Philips and Mr. Shaw, and to leave with you this letter which I received from the stenographer.

Mr. Kiendl — I think we will agree on the matter of the affidavits upon that motion.

Mr. Mullen — Unless we can get it all in, it will be useless. Then in order to complete the record and endeavor to have all the original papers before this committee, I sent one of my clerks to Brooklyn to see if he could find those papers in the court-house, whether they had been filed there by Judge Cullen. I received this letter this morning. Among other things he said: "Papers in the application of Bayne could not be found in Brooklyn, so I cannot send them to you. I think your testimony will cover the subject. Am sorry they were not there." Now, in addition to that, I propose to introduce certified copies of the four indictments to which the defendants plead guilty in Richmond county. I tried to obtain a certified copy of the indictment against Hughs and others, on which there was a conviction in the only case tried, but that was handed over to Charles W. Brook, who was my associate. He was preparing to take an appeal. I sent to his office Tuesday before I came up and found that he was confined to his house. They searched through the office and could not find that copy of indictment, but I presume I will be able to send a certified copy of that indictment to the committee in the course of a few days. My purpose to-day is this: I purpose being sworn and offer these various papers in evidence, and I purpose stating what occurred in disposing of the Hughs case, the verdict of the jury, the imposition of the fine, and imprisonment on Hughs and his associates. Then I purpose taking up these other four indictments and stating to the committee what was done in reference to each of them. Is there any objection to that, Mr. Kiendl?

Mr. Kiendl — There is; yes, sir.

Mr. Mullen — I desire to impress upon the committee that that is all in rebuttal of the testimony given by Mr. Philips, the verbal testimony. He has referred to these proceedings, and would leave the impression upon the record that there had been certain indictments tried at Richmond, and certain indictments in which pleas of guilty had been interposed, where, perhaps, grave offenses against the election law had been perpetrated. I want to show what they were.

Mr. Kiendl — I have no objection, provided all the affidavits on the application made by Mr. Bayne for the purpose of striking out certain names from the registry list; all the affidavits that were used upon that motion are placed in the hands of the committee. I certainly should have objection if only part of them were handed in.



I will take Mr. Mullen's statement that those are copies. If that is the case, I will take them and receive them as such, as if they were the originals taken from the files, but I insist that I would have the right to have all the affidavits.

Mr. Mullen — I will agree to go to Richmond and get certified copies of the other affidavits which were used upon that motion, and submit them to you.

Mr. Kiendl — I submit that there should be no delay upon that account. I submit that that ought to be ended to-day as far as that is concerned.

Mr. Lester — What proof is there in regard to this proceeding before the committee? What evidence has the committee taken in regard to the proceeding to strike names off the registry list?

Mr. Kiendl — None whatever, except this: Mr. Philips testified that he got an order from Judge Cullen, by which Judge Cullen ordered that some forty names be stricken from the registry lists. That is all there is to it. Now, I have no objection whatever to all the papers going in. Mr. Mullen says he has some more papers that ought to be added to that order. I have no objection, but I do not want half of them in, and not all, but I don't think there ought to be any more delay on that account, for we have had delays enough. In regard to the indictments I have no objection to the indictments all going in that Mr. Mullen offers, in which there are convictions, or in which there are pleas of guilt. To the others I would object.

Mr. Mullen — Then I will withdraw the others. I will not offer them in evidence.

Mr. Kiendl — Where there was a conviction, and where there was a plea of guilt, I have no objection to their going in evidence.

Mr. Mullen — That is all I will offer in evidence then.

Mr. Kiendl — Then we agree in regard to that.

Mr. Lester — The documents you propose to introduce are not all present here?

Mr. Mullen — They are all accounted for in the affidavits that are present. They are referred to in Bayne's affidavit and Philips' affidavit. There are two affidavits that were used upon that motion which Philips could not furnish Tuesday, and, if counsel insists, I will send to Richmond and get certified copies of those affidavits and send them to the committee not later than next Monday.

Mr. Kiendl — I do not wish them to be certified. If you say they are copies, I will take your word for it. You said there were some missing affidavits.

Mr. Mullen — There were two, and those two I will supply.

Mr. Kiendl — Then I am satisfied.

Mr. Mullen — Now, I ask that the stenographer mark that affidavit and order to show cause as one of the contestees' exhibits.

Paper referred to marked No. 1, of this date, H. A. B.

Mr. Mullen — Now I offer in evidence these affidavits and ask to have them marked.

Affidavits referred to marked Exhibit No. 2, of this date, H. A. B.

Mr. Lester — These are received with the understanding that the counsel for the contestees will furnish, hereafter, two affidavits used upon the application for a mandamus in that proceeding.

Mr. Mullen — Now, I offer in evidence the letter that I received from the stenographer.

Mr. Kiendl — There is no doubt about that, and it is not necessary.

Mr. Mullen — Then I withdraw that offer. Now, I desire to state that in the case of the People against Winfield S. McDonald, Charles Brainer and Thomas W. Donohue, where there are two indictments, charging those defendants with receiving the votes of two persons mentioned in the indictment, their names not being on the register list, they swearing the votes in and marking them off the tally sheet as having been sworn in, that these defendants plead guilty to each of these indictments and stated to the court that they swore those men in and took their votes under advice of John G. Vaughn, a justice of the peace, who advised them that if these men were residents and citizens of that district, that although their names were not on the registry list they were entitled to vote; and when these defendants plead guilty to these indictments before Judge Cullen, Judge Cullen said: "I will refuse to accept a plea of guilty in those cases, because if the fact is that these men were residents and citizens and entitled to vote in that district, and their names appeared on the poll-list of 1892, and you did not transfer them to the register list of 1893, that it is not a crime to swear their votes in, because if they had come to me on election day I would have issued a mandamus and compelled you to put their names upon the registry list and accept their votes. I will defer action until I get the poll-list of 1892." I went across to the county clerk's office—first we sent to the town clerk's office, and a messenger came back and said the town clerk's office was locked up and they couldn't find him. I thought we might be able to find a copy in the county clerk's office, because they had a habit of filing one

there, although they ought not to have done it. We found a poll-list of that district in the county clerk's office. The district attorney and Mr. Halliday, the attorney sent down by Governor Flower to prosecute those cases, and myself, brought the poll-list before Judge Cullen, and I stated to them that after an examination of that poll-list we were unable to find that the name of either of those individuals had been on the poll-list for the year 1892. Thereupon, Judge Cullen called for the tally sheet. We examined the tally sheet and found that the inspectors had marked upon the tally sheet that these names had been sworn in. He said that under the circumstances there had been a violation of the law; he said: "I must give you some punishment," and he imposed a fine of \$250, and thirty days in jail, for the two Democratic inspectors and for the one Republican inspector. That was the disposition made of that case. Now, in the case of the People against James O'Neil and Edward Doyle. That was an indictment found against those Democratic inspectors in the ninth district of the town of Middletown. They were indicted for excluding a Democrat who appeared there at the polls on election day with a Republican certificate as watcher. O'Neil being the chairman of the board of inspectors, Doyle being one of the other inspectors, and James McNamee, the chairman of the Republican general committee of that county, being the other inspector, when O'Neil told Funk, this Democrat who brought a Republican certificate with him, that he was a Democrat, and that he would not allow him to serve with a Republican certificate, McNamee, the Republican inspector, turned to Doyle, and said, "If we take a vote on this, how would you vote?"—

Mr. Kiendl — Is this a statement of what occurred?

Mr. Mullen — This is a statement of what occurred in court. Doyle said, "I would vote to exclude it." Mr. McNamee was in court when these men were arraigned and plead guilty. Judge Cullen asked if there was any one in court who desired to say anything about this case. Mr. McNamee got up; he was the Republican watcher, and, as I said, the chairman of the Republican general committee of that county, and said: "Judge Cullen, I desire to say that I do not think Doyle is at all to blame; I think he was foolish in using the expression he did. O'Neil is the man that ordered Mr. Funk out." He said, "The vote in that district was perfectly honest in every particular. I was present all the time and participated in the canvass, and all the proceedings were regular throughout, except the exclusion of this man Funk from the room. I would strongly recommend that you

exercise extreme clemency in this case, toward Mr. Doyle." Judge Cullen on the plea of guilty, entered under advice of counsel, by O'Neil and Doyle, imposed first a fine of \$150 against O'Neil and fifteen days in the county jail; he afterward reduced that fine to ten days in the county jail, and \$100. In the case of Doyle he imposed a fine of \$50 and five days in jail. That was the disposition of that case. Now, I would like to have the stenographer mark the first indictment I referred to as the next exhibit in order.

Two indictments offered, marked Exhibits Nos. 3 and 4, of this date, H. A. B.

Mr. Mullen — In the case of Sheehan, Farley and McCarthy, of the fifth district of Castleton, they being the inspectors referred to in the order to show cause of Bayne's which I have offered in evidence, these affidavits; they were indicted, as will appear by the indictment, for canvassing the votes in the presence of the two Republican watchers, the Democratic watchers and the watchers of all parties. All parties were entitled to have watchers present, and all the inspectors being present, with the doors locked; that being a technical violation of the law. Under my advice they plead guilty to that offense, and Judge Cullen, in disposing of their case, said that it appeared on the trial of the Hughs case, that for more than twenty years last past it had been the universal custom, irrespective of party, in Richmond county, and they, supposing it to be the law that when the polls were declared closed they were to lock the doors, they did it in this case, and it was a violation of the law. He said that under the circumstances he was obliged to impose a penalty and he fined the two Democratic inspectors, Sheehan and Farley, and the Republican inspector, McCarthy, \$250 each, and gave them each thirty days in the county jail; and in all those cases where he imposed a similar fine he provided that if the \$250 was not paid, that they should serve an additional thirty days in the county jail. That was the disposition of the indictment, and I offer it in evidence.

Indictment referred to marked Exhibit No. 5, of this date, H. A. B.

Mr. Mullen — Now, I come to the indictment of the People against Hewitt, Blatchford and Love. That was in the ninth district of Castleton. The committee will probably remember that as being the Sailors' Snug Harbor district. Those men were indicted for excluding one John De Morgan, who appeared before your committee as a witness, from the polls on the afternoon of election day. De Morgan came there, a Democrat, with a Republican certificate

as a watcher. The two Democratic members of the board of inspectors, and the Republican member, excluded De Morgan from serving under those circumstances. The fact is, that Love died before this case was called for trial, and Blatchford absconded, so that Hewitt was the only one that appeared for trial. On this indictment, I advised Hewitt to plead guilty that they did exclude De Morgan from the polls, the explanation made to the court. The court accepted the plea of guilty, so far as Hewitt was concerned, but said that Blatchford, having absconded and taken himself, presumably, without the jurisdiction of the court, the indictment as against Blatchford should stand; but in Hewitt's case, he accepted the plea of guilty and sentenced Hewitt to one year in the Kings county penitentiary. That is the disposition of that case. Now, gentlemen, I would like to have you produce the certificate of the Secretary of State, which was handed in here the other day by Mr. Kiendl, so that it may be examined and compared. I have no doubt it is correct, but I would like to be sure, and compare it with the official certificate which was handed me by the Secretary of State, certifying my right to membership in this Convention; or, if you have no objection, if you will examine it later on, I will leave it with you.

Mr. Kiendl — If the committee please, I offer in evidence the statement furnished to me by Mr. Shepard of the vote of Gravesend, to which Mr. Shepard testified.

Mr. Lester — It is a mere comparison.

Mr. Kiendl — That is all.

Mr. Roderick — It contains an argument, and is a mere brief. I object to it.

Mr. Lester — The committee do not receive it as evidence of any facts that it states. It is a mere matter of convenience.

Mr. Roderick — This is not a statement of the Gravesend vote, by any means. It is a comparison between certain coincidences between the poll-list and the register list. Mr. Kiendl may have the benefit of that and anything else that he desires in his brief by submitting it as a brief; but I do not think it ought to be a part of the record here, any more than my brief ought to be a part of the record.

Mr. Lester — The committee receive it merely to assist them in making comparisons of the register lists and poll-lists; they do not receive it as evidence of any facts that it states; we take it as an argument of counsel.

Mr. Mullen — We would like to have the records show that we object to its introduction, and take an exception to the ruling of the committee.

Mr. Kiendl — I will state that Mr. Shepard, upon this examination, did state that he had prepared a comparison of the poll-list in the Gravesend matter, that he would have that comparison in print in a few days and that he would send the committee a copy of the printed comparison he had made, and the matter now offered is that printed comparison.

The statement of comparison referred to was marked Exhibit No. 8, of this date, H. A. B.

Evidence closed.

Mr. Lester — The evidence is closed. The sub-committee are to make their report to the general committee, and the general committee, on Wednesday next, at their meeting, which will be announced at the close of the session of the Convention upon that day, will fix a date upon which they will hear the arguments of counsel in this case. Counsel are expected to make use of the interval between the present date and the date set for the meeting of the general committee to forward the work of preparation for the argument.

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## PROCEEDINGS.

AT THE CAPITOL,  
ALBANY, N. Y., *June 27, 1894.*

Proceedings before the Committee on Privileges and Elections, at the Capitol, in Albany, June 27, 1894, at the close of the session of the Constitutional Convention.

Mr. Kiendl appeared for the contestants in the Sixth Senatorial District contest.

Mr. Mullen, Mr. Roderick, Mr. Fitzgerald and Mr. Curran appeared in person.

Mr. Lester — Mr. Chairman, the sub-committee, appointed to take the evidence in the matter of the contest in the Sixth Senatorial District, is prepared and presents its report. It has taken the testimony in this matter, and it is here with the report of the committee.

Mr. Mullen — Mr. Chairman, Mr. Lester will probably remember that the sub-committee had substantially closed the testimony in this matter on the last day of the hearing, but requested me to furnish some additional affidavits, which were referred to in the testimony.

I have here the affidavits asked for, and a certified copy of the order made by Judge Cullen on the application to strike those names from the registry list. I desire to call the attention of the committee to the fact that the testimony of Mr. Louis Philips is, that there were about forty names stricken from the registry. The order shows that there were nineteen.

Chairman Hirschberg — Will the sub-committee annex that to their report?

Mr. Lester — Yes, and it will submit this with the other exhibits. The exhibits in this case are submitted separately. They are very voluminous.

Mr. Mullen — Before the report of the sub-committee is received, I desire, on behalf of the contestees, to have it understood that we deny the petition. We have not put in any formal written denial.

Chairman Hirschberg — That will be understood, that the answer is a general denial. You make no counter allegations?

Mr. Mullen — No, sir. It is understood that we will file a general denial.

Chairman Hirschberg — I will state to the members of the committee that the report of the sub-committee presents merely the testimony taken with the exhibits, for the consideration of the committee.

Mr. Lester — I would state, Mr. Chairman, that the exhibits are very voluminous. A portion of them are in the custody of the sergeant-at-arms, and a portion of them are in my custody, which I will deliver to the sergeant-at-arms at once, so that the members of the committee may have access to them at any time on application.

Chairman Hirschberg — Gentlemen, what is your pleasure in reference to the report of the sub-committee?

Mr. Foote moved that the sub-committee be requested to present a brief report of the facts which they deem to be established by the testimony.

Chairman Hirschberg — I would suggest that that is hardly proper before hearing the arguments of the parties.

Mr. Lincoln moved that the report of the sub-committee be received.

The question was determined in the affirmative.

Chairman Hirschberg — Now as to the disposition of the case.

Mr. Mullen — Mr. Chairman, on behalf of the contestees, I desire to state that pursuant to an intimation received from the sub-com-

mittee that we should at once proceed to prepare our briefs, I took up the part of the case that appertains to Richmond county as soon as I returned home on Friday last. I commenced the preparation of my brief and I have proceeded with it until my return here yesterday. I propose to have a very elaborate, full and ample brief on the facts, as well as the law, in this matter. Mr. Roderick, I understand, has taken up that part of the case relating to Kings county, including the town of Gravesend, and is preparing his brief. When I left, I placed my brief in the hands of special counsel, who is now working at it continuously every day. I am endeavoring to complete it as soon as possible. We desire to have an opportunity so that the brief which I prepare and the brief which Mr. Roderick prepares may be combined together, and we desire an opportunity to meet in consultation and to hear these briefs read over so that we may be satisfied that they express all that we desire to express in this case. I would ask this committee to fix a day, not earlier than two weeks hence, to hear us on the law and the facts of the case, before you proceed to render any report. By that time my brief will be completed and we will have it printed and we will be in a position to proceed at once and not delay the matter any further. In fact, while we are about it, I think we will have a sufficient number of copies of the brief printed so that each member of the Convention may be furnished with a copy when the report of the committee comes in, if it be necessary to furnish them with it. I think it is a reasonable request to ask that we be afforded two weeks in which to prepare for the argument before this committee.

Mr. Roderick—Mr. Chairman, as Mr. Mullen has stated, I undertook the preparation of that portion of the brief relating to Kings county, which includes the town of Gravesend. As the chairman of the sub-committee stated to you, the exhibits in this case are very voluminous. One exhibit is the affidavits used upon the motion in contempt proceedings. There is a printed record of some 250 odd pages, consisting of affidavits on both sides, and a great deal of the case lies in the facts as claimed by those affidavits. The oral testimony seems to be simply supplemental. I have devoted the intervening time since the case was closed last Thursday, to this case. I see by looking over the record in the Buffalo case that it was suggested there that oral arguments be heard and that then briefs be submitted; but I think in view of the fact that there will be considerable discussion in this case, and that briefs will be of assistance to the committee and to the Convention, that it should be done at the same time; and I do not see, in view of the bulk of the case, how it would be possible to present it prop-



erly to the committee within two weeks. We are going to sit here next week, to-morrow will be an important day in the Convention, and we ought to pay some attention to our duties there. Although the case is of this voluminous nature, very little evidence was introduced on the part of the contestees. We relied simply upon the failure of the contestants to make out a case. I suppose the testimony we offered does not amount to more than twenty or thirty pages. What we desire, Mr. Chairman, is a reasonable time to prepare our brief.

Mr. Kiendl — Mr. Chairman, I would not oppose the application for a reasonable time for the contestees to hand in their brief, had not the fact been that at the last adjournment it was understood, at the suggestion of one of the committee, that they should be prepared here to-day, if they could be, to sum this matter up. It was qualified, that is true, but there certainly was left on Mr. Mullen's mind, and on my own mind, and, no doubt, the committee will bear me out in the statement, the understanding that they were to go on with their work. Now, all the evidence in the case, except the introduction of the counter affidavits on the application in the McKane matter, was introduced by us. About twenty-four pages is all the testimony that the contestees have offered. They have had three weeks' time to get twenty pages of testimony in. Every single application for an adjournment has come from their side. Now, I am prepared to argue this matter at this time. I have prepared our brief, and am ready to argue and hand it in now. My friends on the other side have had four or five different counsel in this case, and certainly with five men engaged in the case they ought to be prepared, it seems to me, to argue this matter here to-day. Mr. Roderick has been engaged upon what he calls the voluminous exhibit in the McKane case for months and months. He knows every line in the affidavit, and he has prepared a brief at General Term which has just been argued. I do believe that this request is made for the purpose of delay, and delay only. On the other hand, Mr. Mullen has been counsel to the convicted inspectors of election in Richmond county, all of whom, under his advice, have pleaded guilty, as they have in the Gravesend case pleaded under Mr. Roderick's advice. It does seem to me very strange that gentlemen who have been so familiar with the case from its inception should come here before this committee and ask for an adjournment, when, so far as I am concerned, the matter is almost new. Now, I submit, while I do not wish to be captious and do not wish to say that they shall not have a reasonable and fair time, the sub-committee will bear me out in the statement that we have been very reasonable with them all

the way through. No adjournment has been opposed, unless it seemed to be an unreasonable one. I submit that this matter can be submitted by them within a very few days. The testimony is very simple and the exhibits are simple. The largest part of the exhibits consist of a poll-list, one of which contained twenty-four hundred and sixty-four names.

Chairman Hirschberg — What few days would you suggest, Mr. Kiendl?

Mr. Kiendl — I would suggest Friday, day after to-morrow, if the committee can hear it at that time.

Chairman Hirschberg — There is quite a difference between the suggestion of two weeks from to-day, and next Friday. How would next week Thursday do?

Mr. Mullen — We cannot do it in that time, Mr. Chairman. We cannot get our briefs printed in that time.

Chairman Hirschberg — Do you intend submitting your brief with an oral argument, Mr. Mullen?

Mr. Mullen — No, sir ; we intend to print our briefs.

Chairman Hirschberg — And make no argument?

Mr. Mullen — And make no argument. I don't think the case requires any argument, so far as I am concerned.

Mr. Roderick — I would suggest, Mr. Chairman, that perhaps a little argument would save a great deal of brief work. It will be very short at any rate, calling attention to a few matters. I would like just a little time to say a few words to the committee.

Mr. Mullen — I do not say I will not want to say something to the committee, but I do not think I shall. I think I will depend upon my brief.

Mr. Foote — I move that July fifth be fixed as the date for the submission of this case.

Mr. Lester — I second the motion.

Mr. Mullen — Mr. Chairman, we cannot have our brief ready by that time. We would have to submit our case without any brief.

Mr. Chipp — Mr. Chairman, in view of the fact that, as it seems to me, the contestants have taken an inordinate length of time to put in their case, I do not think we ought to be too vigorous with those contestants in regard to the presentation of their brief. If these gentlemen state that that time is necessary for them to properly prepare their brief and get it printed, I do not think we ought to

crowd them into eight days, when they require ten or twelve. How would two weeks from yesterday do, gentlemen?

Mr. Mullen — That would do.

Mr. Chipp — I move to amend Mr. Foote's resolution by making the day two weeks from yesterday, July tenth.

Mr. Lester — Mr. Chairman, I desire to call the attention of the committee to this fact: we began taking testimony in this case on the fifteenth of May. On the first day of June the contestants had practically concluded their evidence, and it was then announced that the committee would adjourn until the twelfth, and on that day we would be ready to proceed with the case of the contestees. We took some pains to give notice of that sort, which could not be misunderstood. The contestants reserved the right to swear one or two witnesses which they then had been unable to procure; but it was understood that on the twelfth of June the contestees were to be ready to proceed, and the adjournments since the first of June have really been for the purpose of enabling the contestees to put in their evidence. So that they have really had about twenty days to the fifteen days the contestants have made use of for the purpose of establishing their case.

Chairman Hirschberg — Does Mr. Foote accept the amendment offered by Mr. Chipp?

Mr. Foote — It seems to me, Mr. Chairman, that in addition to the time they have had to work on their brief since the close of the hearing, that eight days additional now ought to be sufficient to complete almost any brief.

Chairman Hirschberg — It may be a very hard case to make a brief in. I know nothing about the facts, but I realize from what these gentlemen say that it is a difficult task and will take a great deal of time, and we ought to give it to them. The question will be on the amendment proposed by Mr. Chipp, which is that Mr. Foote's resolution be so amended that the time designated be July tenth instead of July fifth. The resolution of Mr. Foote is that the briefs be submitted on the fifth of July, and the amendment proposed by Mr. Chipp is that they be submitted on the tenth of July, at which date the contestees agree that they will have their brief ready.

The Chairman put the question on the amendment, and it was determined in the affirmative.

The Chairman put the question on the original motion, as amended, and it was determined in the affirmative.

## PAPERS ON APPEAL.

The following are part of the papers on appeal to the General Term of the Supreme Court from the orders or judgments of the Special Term of said court, entered in the office of the county clerk of Kings county, December 15, 1893, adjudging the defendants guilty of contempt of court in the matter of the People of the State of New York on the relation of William J. Gaynor against John Y. McKane, Nicholas J. Johnson, Harlan Crandall, James H. Cropsey, Richard V. B. Newton and John Doe, Policeman No. 11. (Exhibit T.)

## SUPREME COURT — Kings County.

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The People on Relation of William J. Gaynor  
against

John Y. McKane, Nicholas J. Johnson, Harlan Crandall, James H. Cropsey, Richard V. B. Newton and John Doe, Policeman No. 11.

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*Town of Gravesend, County of Kings, ss.:*

John Y. McKane, being duly sworn, says that he has read the copy of affidavits and paper served upon him herein, upon which the writ of attachment herein was issued on the 25th day of November, 1893, including the affidavit of Charles C. Forster, Ernest G. Hammond and John J. McGuinness, verified November 4, 1893, the copy injunction order, dated November 6, 1893, and the affidavits of Edward M. Grout, with the exhibits thereto annexed, Charles E. Hyde, Max E. Palmedo, Charles G. A. Graburn, Reuben H. Parmenter, Joseph H. Marshall, Henry P. Schmidt, Frank R. Mitchell, Alexander S. Bacon, E. Stillman Doubleday, Robert J. Kent, Louis Stoiber, Clarence W. Hughes, William K. Wardner, William A. Whiting, Michael E. Moore and Peter Rosenbach, with the certified copy of *habeas corpus* proceedings and the evidence taken thereunder, thereto attached, the affidavit of Herbert S. Worthley and Theodore Witte, verified November 22, November 23, and November 24, 1893, and the affidavit of Albert E. Lamb, verified November 25, 1893.

Deponent further says that he is now and has been for a number of years last past the supervisor of the town of Gravesend, and also chief of police of said town of Gravesend, and as such chief of police he was duly vested with all the powers and authorities pertaining to such position, and was subject to the duties and

obligations imposed upon him by the law for the faithful performance of his duties as such officer, and it was the duty of deponent as such chief of police to protect the rights, liberties and privileges of its inhabitants and citizens and to maintain order and peace and enforce the laws for their common benefit.

Deponent, replying and answering to the allegations and statements of said affidavits and papers, which are the foundation of the proceedings above referred to, deposes that it is not true that the population of said town is in fact but about 8,418, or that the number of people in said town entitled to vote is only about 1,600. Deponent says that he has resided in said town for upward of forty-eight years, and for the past twenty-five years he has taken an active interest in its affairs, and that the population of said town has grown rapidly within the past five years, and from deponent's observation and knowledge, the population of said town is from 12,000 to 15,000 inhabitants and has been such for at least a year last past.

Deponent further deposes that it is not true that he and the other defendants named in the action above referred to conspired together to make up fraudulent registry lists of voters for the general election held in said town on the 7th day of November, 1893, or that he fraudulently conspired with them to fraudulently place upon such registry lists the names of 6,216 alleged voters to vote at said election.

Deponent further deposes that it is not true that said registry lists were made up fraudulently by putting upon the said lists the names of large numbers of persons who were not residents or voters of said town, and that it is not true that any of the persons whose names were so registered were taken by deponent while they were temporarily residing in said town for the purpose of having their names placed upon the registry list of said town of Gravesend. That it was not the intention of deponent to get any person to go to said town and illegally vote in said election at said town, and that deponent did not request any persons to illegally register and vote at said election or get anybody to be so requested.

Deponent further says that he has no knowledge or information of any fraudulent registry on said lists of the town of Gravesend aforesaid, or that the voting and the conduct of the said election was illegal on said election day.

Deponent further says that he is informed and verily believes that the election laws of this State require the inspectors of election in the townships throughout the entire State, require them to keep the poll-lists of the preceding election and to copy them on the registry lists to be made by them for an ensuing election, except

the names of such persons as are proven to their satisfaction to have ceased to be voters since the last general election, and that if there were any names upon the said registry lists in said town from the last general election who were not voters deponent believes that they were placed there, because the said requirement of the election law, but that none of said persons, if any there were, voted at such election, as far as deponent is informed or believes or has any knowledge. That the number of names registered in said town on said registry lists was about 6,216, and the number of votes cast at said election was about in the neighborhood of but 3,600, being an increase of but about a few hundred over the cast at the last general election.

Deponent further says that a good explanation for the condition of the registry and the right to vote in the town of Gravesend is set forth in an editorial printed in the Brooklyn Eagle, on October 25, 1893, and which deponent quotes as follows:

“HONEST VOTING IN GRAVESEND.”

“Much has been made of the fact that 3,292 voters have registered in the first and second election districts, in the town of Gravesend this year. In 1891 but 968 voters registered in these districts. The increase is surprisingly large, and it is not strange that John Y. McKane should be asked to explain it. Mr. McKane says that it is not difficult to find the cause of the increase. The permanent population of the town is growing and every summer a large number of men from New York go to Coney Island to work in the hotels and other places of amusement and entertainment. If they remain in the town four months, they acquire the right to vote. This explanation is doubtless correct. No one will deny these men the privilege of voting once. The law gives it to them and it is their duty, as good citizens, to exercise their right. It is complained, however, that they vote twice, once in Gravesend and again in New York. No one will deny that it is wrong for them to do this. When they vote twice they become what is technically known as ‘repeaters.’ If this complaint is well founded, they commit the offense outside of Kings county, and District Attorney Ridgway is no more responsible for the violation of the law than if they voted the second time in Kamschatka. This is so plain that it should need no explanation, but, as this is to be a campaign of education, it can do no harm to repeat self-evident facts. These men are supposed to vote first in Kings county. If Mr. Ridgway should attempt to deprive them of this privilege, though he knew that

“ they intended to vote again in New York, would not be violating  
“ the law? Would he not be interfering with the free exercise  
“ of the privileges guaranteed under the Constitution of the State  
“ to every citizen twenty-one years old who is unconvicted of  
“ crime? We should feel proud of the distinction which those  
“ worthy men bestow upon us by giving the preference to Long  
“ Island in the casting of their legal votes here in the morning. If  
“ they do vote in New York in the afternoon, it is because they  
“ have passed under the benign influence of this honestly-governed  
“ municipality into the range of the corrupt influence of Tammany  
“ Hall. We want them to vote once. If, through mercenary argu-  
“ ments in New York, they are induced to vote twice, the respon-  
“ sibility rests in Fourteenth street, and not in Court Square, or  
“ Gravesend, or Mr. Ridgway's office. The political leaders in  
“ Kings county know this and their conscience is clear.”

Deponent further says that prior to said election deponent's relations with Mr. William J. Gaynor were of the fondest character. Said Mr. Gaynor has been for ten years last passed counsel for the trustees of the common lands of the town of Gravesend, and deponent has frequently consulted with the said Mr. Gaynor about matters pertaining to said town. That deponent never had a cross word with said Mr. Gaynor and no differences of any kind until a short time before this election when deponent was met by Mr. William E. C. Mayer, one of the lawyers in Mr. Gaynor's office, who stated to deponent that he had sent two men to the Gravesend town hall to copy the registry lists which were being prepared on October 27, 1893, and that the man in charge of said town hall had refused to allow them to copy the lists, unless they showed a written order from deponent. That deponent replied to said Mr. Mayer that he had no authority in the matter, and, if said man in charge had told him that he must have a written order from deponent, he had done so without authority, and that deponent had left no such instructions with said man. That deponent thereupon said he would tell Mr. John W. Murphy, one of the inspectors of election, of Mr. Gaynor's desire in the matter, and that, as Mr. Gaynor was the counsel for one of the town boards, it would be an act of courtesy to have a copy of the list made for Mr. Gaynor, and save him the trouble and expense. That shortly thereafter deponent met said Mr. John W. Murphy, one of the said inspectors, and informed him of Mr. Gaynor's desire to have a copy of said lists, and said Mr. Murphy thereupon called upon Mr. Gaynor at his office and told him that he would have a copy of the registry lists made for him to save him the trouble and

expense, but that said Mr. Gaynor used profane and abusive language to him (said Murphy) and about deponent, and said that he would make his own copies or that he would have his own copies made. That thereupon said Murphy left said Mr. Gaynor's office. Deponent then arrived at the conclusion that what the said Mr. Gaynor wanted was not a copy of the registry lists, but an opportunity to exploit himself in the newspapers, and that deponent believes so still, judging from the proceedings of said Mr. Gaynor, as deponent is informed and believes, by sending men down to the town hall to get a copy of said lists and demanding that the said lists shall be given to their possession exclusively, and that the said men so sent down by Mr. Gaynor refused to take their turn and copy with the other copyists.

Deponent further says that it is not true that, assisted by a large number of his police, he seized and locked up, and caused to be removed to the county jail of Kings county without an opportunity for bail, upon false charges of misdemeanors, such as drunkenness, vagrancy and disorderly conduct, fourteen men sent by the said William J. Gaynor, to the town hall at Gravesend, on the 4th day of November, 1893, to serve a written demand for a copy of the registry lists in his behalf on the inspectors of election, but that deponent did not in any way interfere with said men or prevent them from serving said demand.

Deponent further says that on said 4th day of November, 1893, which was on a Saturday, deponent was at his office at No. 40 Court street in the city of Brooklyn, and late that evening he received a telephone message, at his said office from police headquarters at Coney Island, that there were a number of men down there about the town hall who were drunk and acting in a disorderly manner and fighting among themselves. That deponent thereupon telephoned to the police sergeant at said headquarters to ascertain if they were men sent down by Mr. Gaynor, and, if so, not to trouble them or arrest them, as it would give said Gaynor a chance to again exploit himself in a sensational manner in the newspapers. Deponent is informed that these men went to the town hall about eight-thirty o'clock P. M., and pretended to want a copy of the rolls, but they were in no condition for that work. That after a short while they began to fight among themselves and were thereupon told that if they did not behave themselves they would be locked up. They then started on the nine-thirty train back to Brooklyn.



Deponent further says that later in the evening he was again called up on the telephone and was informed that these drunken men had been reinforced by other men, who met them on the arrival of the train at the Twentieth street and Ninth avenue station in Brooklyn and that they were waiting at said depot and station to come down again on the midnight train, and that said body of men were going to the town hall where the certified registry lists were deposited. That deponent feared that said men had some design to forcibly remove said registry lists from said town hall. Deponent then telephoned to the sergeant of police of said town of Gravesend to send some police officers to the town hall and to protect it until deponent arrived from Brooklyn and that he (deponent) would leave the city in time to be at the town hall at the arrival of said midnight train from the city. That deponent arrived at said town hall shortly before the arrival of said men on said midnight train, and deponent ordered said policemen to conceal themselves behind the town hall until they could ascertain what the business of said men was and what they intended to do.

Deponent further says that some of said body of men remained on said train when it arrived at the Gravesend station and continued on their way to Coney Island as deponent is informed and verily believes. The others of the number of about twenty alighted from said train and marched in a body to the town hall where they were stopped by a police officer and asked their business, and asked why they were there at that early hour Sunday morning. Deponent is informed that the other men who remained on said train, when they arrived at Coney Island, were trailed off, two at Mr. Benjamin Cohen's residence, two at the residence of Mr. C. Stubenbord and some at the residence of other persons on the island, with instructions to remain there and to "take no bluffs from any one," this being the nature of the orders they received from the man who trailed them off.

Deponent further says that the men who were at the town hall, as above stated, refused to state their business and they were thereupon arrested and taken to the lock-up and held in default of bail as suspicious characters, for examination on Monday morning.

Deponent further says that he questioned some of the men so arrested, especially those who had been in charge, and asked them what had brought them to the town at such an early hour Sunday morning, and most of them answered that they did not know. They told deponent that they had been hired on street corners, and in liquor saloons, and told to go to Mr. Gaynor's office and to see a tall man, with glasses, who sent them to Gravesend, and that when

they arrived there they would be told what to do, but, as yet, they did not know what was expected of them.

Deponent further says that he questioned one of the men, who afterwards proved to be one of the men who had them in charge, and was informed by him that he was to send two men to the house of each inspector and to demand from such inspectors a list of the names of said registry and to remain there all night. Deponent thereupon told him that Judge Cullen had decided late that afternoon that the rolls could not be copied until Monday morning, and that he had denied Mr. Gaynor, counsel, an order allowing him to copy the lists until Monday morning, and that, as the inspectors all resided several miles from the town hall, it was singular that they all came down in a body to the town hall, where the lists were kept after midnight when it was only in charge of one man, and that deponent thereupon told him that he (deponent) believed that they were up to some bad business, and that it was lucky for them that they had been arrested, as they all ran the risk of being shot for burglars if they were found prowling around men's residences.

That thereupon said man admitted to deponent that they were engaged in a bad business, and that he had no fault to find because they were arrested, and he was ashamed of the disorderly conduct of his drunken companions whom he had charge of.

Deponent further says that he sent detectives to the addresses given by those men and that in nearly every instance they found that no such person lived or ever lived there, and some of these men were recognized by the detectives as being sneak thieves, and some of them were armed with deadly weapons, the proofs of which would have been submitted to the court upon their writ of *habeas corpus*, but for the fact that they were discharged on a writ of *habeas corpus* because of an error in the commitment papers, made by the committing magistrate.

Deponent further says that the newspapers of the city of Brooklyn and the city of New York, published on the following Monday, the sixth of November, to oppose the Democratic ticket, and who were agitating the election of the Republican candidate, including the election of the said William J. Gaynor, characterized and referred to the said arrest as unjustifiable, stating that deponent had assumed autocratic powers, and had arrested these men who had been down as officers of the court to serve a mandamus issued by the court; that they were respectable citizens, and that they had been arrested by deponent without any authority; and because deponent was opposed to the candidacy of the said William J. Gaynor, and by sensational and libelous and untrue articles in said

newspapers, there was considerable excitement produced in said city of Brooklyn, and that some of said newspapers advocated the sending of armed men to the town of Gravesend on election day, and even suggested that it would be proper to organize vigilance committees to punish deponent.

That some of said newspapers contained what alleged to be statements and interviews from and by said William J. Gaynor and his friend and members of the Republican party, which were grossly inaccurate and untrue in reference to deponent, and the arrest of said men and deponent's motive and right to arrest said men, and that it was rumored about the city of Brooklyn on said day and in the town of Gravesend that on the following day Colonel Alexander S. Bacon, an intense Republican partisan and known as a political enemy of deponent, and whose action in the campaign in the interest of the Republican party and of the candidacy of the said William J. Gaynor, in coming down to the town hall in Gravesend on election day, where the polling places were located in command of three hundred armed men, and equipped for any emergency, and that they would take control around the polls on that day, and would be more than sufficient to cope with the police force of the town of Gravesend.

That deponent, knowing the animosity of said Colonel Bacon towards deponent, and the state of the public mind, created by the newspaper articles, believed that the said Colonel Bacon would come down on election day with armed men for the purpose of creating a disturbance around the election polls in the town of Gravesend, and deponent was apprehensive that the lawful voters of said town would be intimidated by the said Colonel Bacon and his men, and that the latter would create a disturbance around the polls, and for that reason deponent, who was chief of police of said town of Gravesend, which police force at the time did not consist of more than about thirty policemen. Deeming it to be in the performance of his duty as such chief of police, left his residence at Sheepshead Bay on the morning of election day at 5.30 A. M., and drove over to Heerlein's Hotel, just opposite the town hall, a distance of about two miles, where deponent intended to have his breakfast that morning. That when deponent got near the town hall he drove past a number of carriages, which were standing in the Neck Road, a highway to the town hall, and he observed in and about said carriages from twenty to thirty people and some one from among their number giving orders and directions of some nature to them in a loud tone of voice. That said carriages and people referred to were about five hundred feet from the town hall

at the time that deponent drove past them, and that when deponent arrived at Heerlein's Hotel he was informed that there were a number of other carriages which came from another direction quartered along Gravesend avenue, about the same distance from the town hall, and that there were a number of people in and about said carriages, and that shortly after this there came a report to deponent that some twenty-five men, non-residents of the town, had lodged the night before at Thompson's Hotel, Coney Island, stating that they were going on a gunning expedition on election day, were crossing the trestle near the town hall, and that there were gangs of strange men, non-residents of the town, appearing from other directions. By this time the people about the town hall were excited and alarmed, and deponent believed the rumors that he had heard the day previous, and were afraid that said strange people were about to create some disturbance about the election booths. That at this juncture a person left the line of carriages and went directly to the town hall and stood with his back against the entrance to one of the voting booths. That at that time deponent was on the stoop of said Heerlein's Hotel, opposite to the town hall, and deponent went over to see who it was, when he recognized Mr. Alexander S. Bacon, above referred to, who was stated to be the person to come to the town hall with three hundred armed men prepared for any emergency.

That when deponent recognized him deponent said: "Oh, that is you, is it, Colonel Bacon? From what I've heard I've been expecting you with a force of armed men," and I asked him what he wanted. He answered in a dramatic style and in an excited manner, gesticulating, stating that he had come with sufficient men to see that the law and order was enforced, and to preserve the peace, and that he proposed to place Republican watchers at each polling place. That deponent thereupon told the said Colonel Bacon that the Republican watchers who had been properly appointed were in each polling place, and that deponent, as chief of police, was there to preserve the peace, and deponent ordered the said Colonel Bacon to remove from the entrance of said polling booth and not to obstruct the entrance. This he said he would not do, and he immediately began yelling to the people of his party who were awaiting at the points above mentioned, shouting to them to come on, "here he is. Here he is." Deponent at the time, believing that the said Colonel Bacon was endeavoring to entrap him into a personal encounter with him and his party for some sinister purpose, walked away from him and recrossed the road to the hotel stoop. The next moment there was a rush in

answer to his summons toward the town hall. They appeared from the several directions where they appeared to be awaiting his signal. Some of them had drawn revolvers, some heavy canes, which they attempted to use, and there was considerable excitement, people running this way and then that way. Some of the Bacon attacking party were disarmed and four of them were arrested, including Colonel Bacon, and they were sent to police headquarters, with a revolver and a heavy cane which had been taken from some of the party.

Whereas deponent is informed and believes that charge is made against them for breach of the peace in creating a disturbance about the election booths.

Deponent further says that they were taken to police headquarters, at Coney Island, where the lock-up is situated in one of the summer concourse passenger wagons, and not in a prison van, and that he is informed and believes that Mr. R. P. V. Newton, a justice of the peace of the town of Gravesend, followed them down to said police headquarters on the first train which arrived after their arrest, reaching police headquarters about half-past seven A. M., where said Justice Newton arraigned the said Bacon and those arrested with him, and upon their waiving examination, admitted them to bail on their own recognizance.

That upon the return to the town hall of said Mr. Justice Newton, he informed deponent that some of the men arrested, not Colonel Bacon, however, stated in excuse that they had intended to serve injunction papers of some kind. That this was about nine A. M., and was the first time that deponent learned that any of the Bacon party desired to serve injunction papers or any legal papers whatever. That deponent, judging from the conduct of said Colonel Bacon and of the members of his party rushing at his command armed as above described, believed that it was their intention to create a disturbance about the polls and to take forcible possession of the polling place and voting booths, and that it was not intimated to him by Colonel Bacon or by any other person that they intended to serve injunction orders or any legal papers or any papers whatever, when offered to deponent by any of the said Bacon party, including the said Colonel Bacon, or by any of the parties making affidavits upon which these proceedings are founded and as above referred to, and which deponent has read, and that the statements to the contrary contained in any of the said affidavits are absolutely false and untrue, and that had deponent known that it was the desire of said Colonel Bacon, or any other person on said election day, or at the time that the said

Colonel Bacon and the said parties created the disturbance about the election polls to serve injunction orders or any other papers upon deponent, deponent would have offered no resistance to the service of the same as deponent had no desire and would not disobey any orders or mandates of any of the courts. That deponent has always respected and complied with said orders. Deponent further says that the statement contained in the affidavit of John J. McGuinness that deponent said to him that if watchers for the election at Gravesend did not live in that town, that he would not respect and would not allow them to be present, and that in the opinion of deponent there was no authority to appoint a watcher for election in the town of Gravesend who did not reside in said town is absolutely false and untrue. That deponent never had any conversation with said John J. McGuinness of that nature whatever.

Deponent further says that the statements in the affidavit of Alexander S. Bacon, that when the said Bacon stepped from his carriage the carriage was surrounded by policemen, in front of whom was deponent, is false and untrue; or that said Bacon said: "Mr. McKane, these gentlemen are watchers at this election, and place themselves under your protection," or that deponent said to Bacon: "We have been expecting you. You are the man I have been looking for. Get out of this," or that said Bacon said: "We will not get out. We are here as election officers at this election, and we demand your protection, and, moreover, we are under the protection of an injunction of the Supreme Court, which we now serve upon you;" or that the said Bacon took any injunction orders or papers from any of his companions in the presence of deponent, or that deponent said: "I will take no papers. Injunctions don't go," or that said Bacon replied: "You will have to take them, whether you want them or not. You have got to take them, and, moreover, if you do not protect us, you will be responsible," or words to that effect, or that deponent said to the policemen or people about him: "Hustle these men off; rush them all off," or that deponent witnessed an assault upon said Bacon, whereby he was either pushed or thrown down or tripped up, or that deponent following, said: "Arrest that man," meaning said Bacon, are each and every one absolutely false and untrue.

Deponent further says that the statements contained in the affidavit of E. Stillman Doubleday, that the carriage referred to stopped in front of the town hall and was immediately surrounded by a number of persons, consisting of deponent and a number of uniformed policemen and other persons is absolutely false and

untrue That the whole party stepped out of the carriage, or that said Bacon was immediately in front of deponent is false and untrue.

And that it is also false and untrue that deponent said, addressing said Col. Bacon, "This is you, Col. Bacon, is it? You are just the man I have been waiting and looking for," or that Col. Bacon replied, "Mr. McKane, I am armed with an injunction issued from the Supreme Court, signed by Judge Barnard, to be served on you, and now I serve it." And it is also false and untrue that said Bacon held out in his hand to deponent a paper, or papers, or that he said to deponent, "An order of injunction which has Judge Barnard's signature to it," or that deponent replied, "You serve nothing;" or that Mr. Bacon continued or said, "But I shall serve it and I do serve it;" or that he presented any paper to deponent. And it is also false and untrue that deponent turned to the officers about him and said, "Men, take this man away from here," or that thereupon the said Bacon was seized by two or three uniformed police and by ununiformed men. It is also false and untrue that deponent returned to where the said Doubleday says he was standing and said to him, "Are you one of these men," or that he turned and said to an officer standing by, "Put that man away out of this." It is also false and untrue that the said Doubleday thrust a parcel of papers against deponent or showed him an original injunction order and Judge Barnard's signature upon it, or that the said Doubleday said to deponent, "I serve this injunction order of the Supreme Court on you, Mr. McKane, signed by Judge Barnard," or that deponent pushed any papers aside as said Doubleday held them out or that any man by the direction of deponent grabbed said Doubleday and violently forced him beyond any line established or otherwise from said polling place; or that deponent saw him exhibiting any order or other papers or calling the attention of any officer or other person to any order or papers. Or that anything was said in the presence and hearing of deponent by any officer to said Doubleday, or by said Doubleday to any officer or other persons.

Deponent further says that the statements contained in the affidavit of Robert J. Kent, above referred to, that he heard deponent order the arrest of Col. Bacon or that said Col. Bacon was knocked down and dragged away, are false and untrue, and the statements in said affidavit are false and untrue that deponent said, "I would have knocked him down if it hadn't been for the looks of it," or words to that effect, or that deponent exclaimed, "Are there any more of them around?" or that deponent said to the said Kent or any other person, "Get out of here. You

have no business here," or that said Kent took out an original injunction order or other papers and began to open it or them in the presence of deponent, or that said Kent said to deponent, "I have an injunction order of Judge Barnard;" or that deponent said, "Drive them out;" or that said Kent was struck or knocked down or driven by force out of the town in the presence of deponent. Deponent further says that the statements contained in the affidavit above referred to of Louis Stoiber, that when the said Stoiber and others alighted from the carriage referred to it was surrounded by several policemen, and that the aforesaid Bacon was immediately in front of deponent is false and untrue. And that the statements in said affidavits are false and untrue that said Stoiber heard the said Bacon say to deponent that he served an injunction order upon deponent, or that he heard deponent say that he should not serve him, or that he heard deponent order the arrest of said Bacon or those who were with him, or that he saw the said Bacon assaulted and knocked down in the presence of deponent.

Deponent further says that the statements contained in the affidavit above referred to of Clarence W. Hughes, that the carriage referred to therein was surrounded by a crowd of persons consisting of deponent, uniformed policemen and others is false and untrue, and that the statements therein contained are false and untrue that Col. Bacon stepped from the carriage and was confronted by deponent, or that deponent said to said Bacon, "Bacon, you are the man I've been looking for; I want to see you," or that Col. Bacon said to deponent, "I am here by authority of the Supreme Court, from which I have an injunction signed by Judge Barnard," or that deponent said, "Injunctions don't go here," or that deponent said, "Arrest him. Arrest these men," or that said Bacon was seized, struck, thrown down or hustled into a police van.

Deponent further says that the statements contained in the affidavit above referred to of William K. Wardner that he saw Col. Bacon with legal papers in his hands immediately in front of deponent and saw the said Bacon seized and thrown down, is false and untrue in each particular. And that the statements therein contained are false and untrue that said Wardner was directly behind Mr. Whiting and saw him serve an injunction on deponent or that he heard said Whiting state to deponent that the paper or any paper was an injunction issued by the Supreme Court, or that he saw said Whiting touch deponent with a paper, or that he heard said deponent order the arrest of said Whiting or of any or the



whole party. Deponent further says that the statements contained in the affidavit above referred to of William A. Whiting that he saw Col. Bacon step out of a carriage, holding up a folded paper in front of deponent, is false and untrue and that the statements therein contained are false and untrue that said Bacon said to deponent, "I have here an injunction from the Supreme Court," or that deponent said, "Injunctions don't go here. Take them away. He's drunk. Arrest him and put him in a cell. We don't want any drunken bums here." Or that deponent and others seized Col. Bacon and rushed him up the street and threw him to the ground, or that said Col. Bacon was put into a police van. It is also false and untrue that deponent, seeing the said Whiting, said, "Who is this? Lock him up," and that it is also false and untrue that the said Whiting thrust injunction or other papers against deponent's breast or person, or that said Whiting said to this deponent, "This is an injunction issued by the Supreme Court of the State of New York restraining," or that deponent interrupted or said to him or to any other person, "Lock him up. Lock him up. Hustle them up." Or that said Whiting was seized in the presence of deponent by uniformed policemen and other men and forced into a police van.

Deponent further says that the statements contained in the affidavit above referred to of Michael E. Moore that said Moore saw Col. Bacon hold up papers to deponent or heard him say to deponent, "I have an injunction of the Supreme Court signed by Judge Barnard restraining any and all persons from interfering with us as watchers, is false and untrue, and it is also false and untrue that deponent said, "Injunctions don't go here, arrest him," or that said Bacon was struck and knocked down in the presence of deponent, and that the statements contained in said affidavit are false and untrue that Mr. Whiting held out a bundle of papers to deponent or any injunction summons and complaint of affidavits, or that he touched deponent's body with them or that he said it was an injunction of the Supreme Court restraining anybody from interfering with us in the discharge of our duties, or that deponent ordered the police officers to arrest the said Whiting or the said Moore or any of said party referred to, or that any of said party was seized and pushed into a van in the presence of deponent.

Deponent further says that the statements contained in the affidavit of Peter Rosenbach above referred to, that said Peter Rosenbach saw Col. Bacon standing in front of deponent and heard deponent say, "Hello, Bacon, I've been looking for you," or words to that effect, or that the said Bacon said to deponent, "I have an

injunction of the Supreme Court signed by Judge Barnard," are false and untrue, and that the statements contained in said affidavits are false and untrue that he saw deponent backing away from said Bacon and heard deponent say, "Injunctions don't go here. Arrest that man," or that he heard deponent say, "Nobody served me with any injunctions," or that he saw deponent go over to where Mr. Doubleday was standing and saw the said Doubleday holding a bunch of papers out to or against deponent, or heard the said Doubleday say to deponent, "I have an injunction from Judge Barnard," or that deponent saw a crowd of people attack the said Doubleday and force him out of the town.

Deponent further says that the statements contained in the affidavit above referred to of Herbert S. Worthley, that while the said Worthley was walking about the town hall, deponent watched him carefully, or that he said anything in the presence and hearing of deponent that he was there as an official watcher, or that he had an injunction or order signed by Judge Barnard, is false and untrue or that he heard deponent say or call out, referring to said Worthley, "Hit him, anyway," or that said Worthley was assaulted or knocked down to the ground in the presence of deponent or was driven away, is false and untrue.

Deponent further says that the statements contained in the affidavits above referred to of Theodore Witte, that he heard Col. Bacon shout or say to deponent, "Do you order this arrest," or that he heard deponent reply, "Hustle him," or that he saw a police officer immediately in the presence of deponent seize the said Bacon and force him into a wagon, are each false and untrue. And that the statement in said affidavit that he heard deponent say, "Did you hear that fellow shout his order of the court?" Or that several persons in the bar-room referred to, or any person therein ask deponent, "Who was that fellow," or that deponent replied, "That was Col. Bacon, and we have him where he won't bother us again to-day. He's locked up," are each false and untrue, and that the statements therein that deponent perceived the said Witte and ordered that he be ejected from the hotel, and that the said Witte was thereupon thrown out of the back door, are each of them false and untrue.

JOHN Y. McKANE.

Sworn to before me this 30th  
day of November, 1893.

JAMES BOYLE,  
*Notary Public, Kings County.*

William J. Buttling was sworn by Mr. Justice Barnard, and examined in open court during the proceedings on the seventh day of December, and, being examined by Mr. Roderick, testified as follows:

I reside at 214 High street, in the city of Brooklyn.

I am now and have been since the month of June, 1893, a delegate from the Fifth Ward to the Kings county Republican general committee, and during that time was and am now the president of said Kings county Republican general committee, and I am now and was at said time a member of the executive committee of said general committee for said Fifth Ward of the city of Brooklyn.

I have for several years past been a delegate to the said general committee and a member of the said executive committee for the Fifth Ward of the city of Brooklyn and am well acquainted with the usages, practices and constitutions, by-laws and rules of the said general and executive committee.

I have heard read the affidavit of David P. Watkins, verified in the above-entitled proceedings on the 6th day of December, 1893, and the statements made therein, so far as they relate to my giving authority to said Watkins to cause my name as president of said Kings county Republican general committee to be signed to the certificates of appointment of Republican watchers for the general election held on November 7, 1893. The certificates of appointment for said Kings county republican general committee so signed, were issued to be used at said general election throughout the different polling places in the county of Kings, and were so used, and that said certificates of appointment were issued to the respective members of the aforesaid executive committee for the ward or town they respectively represented, blank places being left to insert the election district, ward or town and watcher's name by the proper officers of the subordinate Republican organization and executive member to whom the same were delivered.

I was at the Special Term of the Supreme Court, Kings county, held by Justice Barnard, at this court-house on the 5th day of December, 1893, and I there examined the twelve Republican watchers' certificates in the above-entitled proceedings attached to the affidavits of the watchers read on behalf of the defendants, and said certificates are genuine and are certificates signed and authenticated in the way I have stated. That the other certificates were signed and authenticated for use in the different election districts of the different wards and towns of the county of Kings in the same manner.

I am acquainted with Anson M. Stratton, to whom said twelve certificates of appointment of watchers are claimed to have been issued and delivered, and, at the time they were so claimed to have been issued and delivered, he was and is now a member of the Republican general committee of Kings county, and the only member of the executive committee of said general committee for the town of Gravesend.

On the 4th day of November, 1893, between five and seven o'clock in the afternoon, Mr. Jesse Johnson, who was at that time, and who is now, a member of said Kings county Republican general committee and a member of said executive committee for the Twentieth Ward of the city of Brooklyn, requested me to erase my name from fifty certificates of appointment of Republican watchers which had been signed pursuant to the authority given by me to the said David P. Watkins, as above stated, and, at his request, I personally affixed my signature thereto, and delivered the same to the said Jesse Johnson, with the blanks for the election districts, ward, or town, and watcher's name unfilled. I was not told by Mr. Johnson for what purpose he wanted these certificates, but I believed and understood that some of them were to be used for the town of Gravesend. I did not, however, give directions or by words authorize him to appoint or revoke the appointment or certificate of appointment of any watchers in any election district of Gravesend, for which certificates of appointment had been already issued in the manner I have above stated, and I consider I did not have the power to do so.

The fifty certificates that I personally signed at Mr. Johnson's request were the only certificates that I personally signed of all the certificates that were issued and used for Republican watchers at the different polling places in the various election districts in the several wards or towns throughout the city of Brooklyn, county of Kings, and were the last of the certificates left.

I did not say to or tell Mr. Jesse Johnson that he could fill in the blanks in said certificates the names of Republican watchers, for any of the polling places in the election districts of the town of Gravesend, and no names of watchers were mentioned or suggested to be filled in these blanks, and I did not know what names were to be filled in them, and do not know now what names were inserted therein.

## SUPREME COURT — Kings County.

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The People of the State of New York ex rel. William J. Gaynor  
against

John Y. McKane, Nicholas J. Johnson, Harlan Crandall, James  
H. Cropsey, Richard V. B. Newton and John Doe, Policeman  
No. 11.

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*State of New York, City of Brooklyn, County of Kings, ss.:*

David P. Watkins, being duly sworn, says that he resides at No. 96 India street, city of Brooklyn; that he is now and has been for two years last past clerk of the executive committee of the Kings county Republican general committee. Deponent is also now and has been for several years last past a delegate to said Kings county Republican general committee. That the annexed is a true printed copy of the constitution, by-laws and rules of order for the organization and government of the Republican party in Kings county, New York, which have been in force since the meeting of said Kings county Republican general committee held in the month of October, 1893, and which have since governed the Republican general committee of Kings county and the subordinate Republican organizations mentioned in said constitution, by-laws and rules of order.

Deponent further says as clerk of said executive committee aforesaid and by express authority from William J. Buttling, the president of said Kings county Republican general committee of Kings county, he caused all the watchers' certificates for Republican watchers at the general election held on November 7, 1893, to be signed with the name of the said William J. Buttling, as such president, which certificates of appointment of watchers so signed, were issued and used at said election throughout the different polling places in the county of Kings, and that said certificates were issued to the respective member of the aforesaid executive committee for the ward or town they respectively represented, blanks being left to insert the names of the election districts, ward or town and the watcher's name by the proper local officers of said subordinate Republican organizations and the executive member to whom the same are delivered.

Deponent further says that Mr. Jesse Johnson was at the time of the last general election and prior thereto a delegate to said Kings county Republican general committee and a member of said executive committee for the Twentieth Ward of the city of

Brooklyn, and that Anson M. Stratton was a member of the Republican general committee of Kings county and a member of the aforesaid executive committee for the town of Gravesend, and that the certificates of appointments of Republican watchers furnished to him for use at said election above mentioned, were in the same form and signed in the same manner as the other certificates which were issued and used in the other polling places throughout the entire county of Kings.

DAVID P. WATKINS.

Sworn to before me, this 6th day  
of December, 1893.

WM. M. O'REAGAN,  
*Commissioner of Deeds, City of Brooklyn.*

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SUPREME COURT — Kings County.

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The People on the Relation of William J. Gaynor  
against

John Y. McKane, Nicholas J. Johnson, Harlan Crandall, James  
H. Cropsey, Richard V. B. Newton and Others.

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*State of New York, Town of Gravesend, Kings County, ss.:*

Anson M. Stratton, being duly sworn, says that he is a citizen of the State of New York, and a resident and voter of the town of Gravesend, and has been such for more than ten years past, and that he has voted at the general elections in said town during said ten years, and that during the past five years he has identified himself with and is a member of the Republican party, and has voted the Republican ticket during that time at the general elections held during those years. That deponent further says that he now and was for the two years past the delegate of the Republican party for the town of Gravesend to the Kings county Republican general committee. That during the last year he was the only member of said general committee for the town of Gravesend and that he was also a member of the executive of said Kings county Republican committee. That pursuant to the rules and usages of the said Kings county Republican committee deponent previous to the last general election received from the said general committee the necessary papers and documents, etc., pertaining to said election, including Republican

pasters, return blanks, watchers' certificates, etc. That the watchers' certificates were as usual signed by the chairman and secretary of the Kings county Republican general committee with blanks to be filled in with the names of the watchers and the election district. That deponent, together with Henry R. Williams, the president of the Republican association or committee of the town of Gravesend, on the 6th day of November, 1893, without any suggestion from any other person selected from the members of the Republican District Association of the town of Gravesend the names of the two Republican watchers to act as watchers on the election to be held on the 8th day of November, 1893, in each of the six polling places in the town of Gravesend and inserted their names and respective election districts in said watchers' blanks and caused said certificates to be delivered to said watchers. The said watchers' certificates were also signed by deponent as executive member of said Kings county Republican general committee; and by the said Henry R. Williams as the president of said Republican Town Association, and were delivered to the respective watchers named therein. That on the morning of the 7th day of November, 1893, election day, deponent was at the town hall of the town of Gravesend shortly after the opening of the polls, and remained there until nearly before the close of the polls on that day, and acted in the interest of the Republican party as such member of the Kings county Republican general committee, and upon the arrival of deponent at the polls he personally ascertained if the Republican watchers so appointed were performing their duties as such watchers, and for that purpose he visited each of the polling booths in the six election districts in said town, and found the two Republican watchers in each of said districts were so acting in said booths.

That deponent further says that the said Republican watchers continued to perform their duties as such watchers during the time that deponent was there on election day. That so far as deponent observed or was informed, there was no illegal voting upon said day at said election in said town of Gravesend, and no complaint was made to him of any illegal practice being committed on that day at said election booths, and that deponent wore the badge of his office as member of the Republican committee about and around said polls.

Deponent further says that the appointment of the said Republican watchers at the last election were made in the same way that the Republican watchers had been appointed at the general election held during the year 1892, and that it is provided in the

constitution and by-laws of the Kings county Republican general committee as follows: Section 2, article 4. The president of the district association shall also have power to appoint and may at will remove all watchers, challengers, custodians of ballots and election booths and such aids around the booths of his district on election day as may be authorized by law, and by the action of his ward or town committee, and shall have full command of the working force of the booths in the election district

Deponent further states that the watchers who acted at the said elections are mentioned in the certificates so signed by deponent and said Henry R. Williams, and that election certificates so signed by them are those attached to the affidavits of the respective watchers made in these proceedings, and which deponent has examined, and that no other Republican watchers were appointed to act on election day to the knowledge of deponent.

That deponent is well acquainted with Mr. William J. Gaynor. That Mr. William J. Gaynor, who was a candidate for Supreme Court judge, voted for at the last election, and that deponent is and was a client of said Mr. Gaynor, for several years last passed, and that the said William J. Gaynor knew that the deponent was the executive member of the Kings county Republican general committee from the town of Gravesend, and that said William J. Gaynor did not request deponent to appoint any particular persons as Republican watchers in said election districts, in the town of Gravesend in the last election, notwithstanding that deponent was in said William J. Gaynor's office in the city of Brooklyn, several times within a week prior to the said election.

ANSON M. STRATTON.

Sworn to before me, this 30th  
day of November, 1893.

JAMES BOYLE,  
*Notary Public, Kings County.*



## SUPREME COURT — Kings County.

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The People on Relation of William J. Gaynor  
against

John Y. McKane, Nicholas J. Johnson, Harlan Crandall, James H.  
Cropsey, Richard V. B. Newton and John Doe, Policeman  
No. 11.

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*Town of Gravesend, County of Kings, ss.:*

Henry R. Williams, being duly sworn, says that he is a citizen of the State of New York and a resident and voter of the town of Gravesend and has been for eight years last past. That during that time he has been a member of and identified with the Republican party. That during the last six years he has been a member of the Republican association of the town of Gravesend and was president of said Republican committee or association for the town of Gravesend for the year 1893.

That he has heard read the affidavit of Anson M. Stratton, made in this proceeding and verified the 30th day of November, 1893, and that the statements therein contained, so far as they relate to deponent, are true. That deponent has also examined the original watchers' appointments attached to the affidavits of the Republican watchers who were appointed and acted at the last general election in the town of Gravesend on the 7th day of November, 1893, and that they are the certificates signed by deponent and deponent filled in the blanks in said certificates on the 6th day of November, 1893, with the names of the watchers of the respective election districts.

Deponent further says that his office is adjoining the town hall in the town of Gravesend, and that he was present at the election polls of said town on said election day shortly after the polls opened and remained there during the day until shortly before the polls closed, and that so far as deponent observed and was informed said watchers performed their duties at the said election while deponent was there.

Deponent further says that so far as he observed and was informed that there was no illegal voting at said election in said town of Gravesend on said election day and no illegal practices whatever, and that said election was fairly conducted as far as deponent was informed and verily believes.

Deponent further says that he was not requested by any person to appoint such watchers and that he selected their names from

the roll books of the Republican associations of said town and that each and every one of them were Republicans, and that said original appointments of Republican watchers, so signed by deponent and the said Anson M. Stratton on the 6th day of November, 1893, are attached to the respective affidavits of said watchers made in these proceedings, and that deponent knows that fact from having examined said appointments attached to said affidavits verified November 30, 1893.

HENRY R. WILLIAMS.

Sworn to before me this 30th  
day of November, 1893.

JAMES BOYLE,  
*Notary Public, Kings County.*

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SUPREME COURT — Kings County.

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The People of the State of New York ex rel. William J. Gaynor  
against

John Y. McKane, Nicholas J. Johnson, Harlan Crandall, James H.  
Crossey, Richard V. B. Newton and John Doe, Policeman  
No. 11.

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*Town of Gravesend, County of Kings, ss.:*

Frank T. Clark, being duly sworn, says that he is a citizen and elector of the State of New York, residing in the town of Gravesend, county of Kings, in said State, and that he has resided in said town for several years last past and is a voter therein and has voted in said town for several years last past at the general election held therein, that he was one of the inspectors of election in the fifth election district of said town prior to and on the 7th day of November, 1893.

Deponent further says that on the said 7th day of November, 1893, he arrived at said election district about five o'clock in the morning and made ready for the opening of the polls of said election district by posting all notices at said district and performing the other matters required by law; that shortly thereafter and before the opening of said polling place in said district, William H. Nostrand and Theodore S. Wilkinson, two Republican watchers, delivered to this deponent and the other two inspectors of election a certificate of appointment issued by the Republican general

committee of Kings county for said election district appointing them watchers of said district and that said deponent thereupon permitted them, as well as two Democratic watchers who were appointed by the Democratic general committee of Kings county, and who also exhibited their certificates of appointment as watchers, to take their places at such election district as watchers. That the Republican watchers' certificates referred to are annexed to the affidavit of said watchers made in these proceedings verified November 30, 1893.

Deponent further says that on said appointment he took place, and performed his duties as such inspector, and did not leave it even temporarily until after nine o'clock that morning. That during all the time he was at said election district as such inspector during said day, Republican watchers were present performing their duties as watchers.

Deponent further says that during no time on election day was he served with a copy of an injunction order restraining him from interfering with watchers, nor did any one attempt so to do, nor did he know that any one had been served, or attempted to be served, on any one at said election district or anywhere else on that day.

Deponent further says that he had complied with all the duties required of him by law as such inspector up to the present time, and caused a copy of the registry list, as required by law, to be forthwith conspicuously posted in the place (the town hall of the town of Gravesend) where the meetings of the inspectors of election in making said registry lists are held, and where it has remained up to the time of said election, accessible to the public for examination or making copies thereof, and where it was examined and copied by the public without any interference or obstruction on the part of deponent, or on the part of any other person to deponent's knowledge.

Deponent further says that no application has ever been made to him by Mr. William J. Gaynor, nor any other person on his behalf, to examine or copy said registry lists, or any of the copies thereof and being refused, and that deponent has always permitted, up to and prior to elections, persons to examine and copy the same.

Deponent further says that said registry lists were not fraudulently prepared in any particular, and that there was no fraudulent voting on election day at the said polling place, nor any fraudulent practices in the conduct of said election at said polling place, so far

as deponent was enabled to ascertain by performing his said duties as said inspector of election as aforesaid.

FRANK T. CLARK.

Sworn to before me this 1st day  
of December, 1893.

JAMES BOYLE,  
*Notary Public, Kings County.*

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SUPREME COURT — Kings County.

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The People of the State of New York ex rel. William J. Gaynor  
against

John Y. McKane, Nicholas J. Johnson, Harlan Crandall, James H.  
Cropsey, Richard V. B. Newton and John Doe, Policeman  
No. 11.

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*Town of Gravesend, County of Kings, ss.:*

Gerard W. Ryder, being duly sworn, says that he is a citizen and elector of the State of New York, residing in the town of Gravesend, county of Kings, in said State, and that he has resided in said town for several years last past, and is a voter therein, and has voted in said town for several years last past at the general election held therein; that deponent, for several years last past, has identified himself with and is a member of the Republican party, and has voted the Republican ticket at the aforesaid elections for several years last past. Deponent further says that he is now, and was, prior to the last general election, held on the 7th day of November, 1893, a member of the Republican association of the town of Gravesend, and duly enrolled as such member on the roll of said association; that said association is divided into election district associations of said town under the constitution, by-laws and rules of the Kings county Republican general committee, and what deponent means by being a member of the Republican association of the town of Gravesend and duly enrolled as above stated is, that he is now and was prior to the said last general election above mentioned a member of one of said Republican district associations of said town of Gravesend, and duly enrolled as such member on the roll books of said district association. Deponent further says that on the 6th day of November, 1893, he received from Mr. Henry R. Williams, the president of the Republican association or committee of the town of Gravesend, and from Mr. A. M.

Stratton, the only member of the Republican general committee of Kings county, and a member of the executive committee of the said general committee, the same being sent to him by them, as deponent is informed and believes, a written and printed appointment as watcher for the Republican party, which is hereto annexed. Deponent further says that on the 7th day of November, 1893, and prior to the opening of the polls at the town hall in the town of Gravesend, deponent delivered to the inspectors of election of the election districts mentioned in said watcher's appointment, the said watcher's appointment, whereupon deponent was recognized by them as such watcher and was admitted within the guard rail of the polling place in said district more than fifteen minutes before the unlocking and examination of any ballot-box in said polling place, and that deponent remained there from that time and performed his duties as such watcher on said election day as required by law. Deponent further says that he has delivered his said watcher's appointment to the said inspectors as above stated as early as 5.30 o'clock on the morning of said election day, and was within said polling place from that time and did not leave it even temporarily for upwards of at least two hours.

Deponent further says that there was no fraudulent voting on election day at said polling place nor any fraudulent practices in the conduct of said election at said polling place so far as deponent was enabled to ascertain by performing his said duties as said watcher aforesaid.

GERARD W. RYDER.

Sworn to before me this 30th  
day of November, 1893.

JAMES BOYLE,  
*Notary Public, Kings County.*

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KINGS COUNTY.

REPUBLICAN GENERAL COMMITTEE.

*Watchers' Certificate.*

In pursuance of section 102 of the Election Law, Mr. Gerard W. Ryder is hereby duly appointed a watcher for the Republican party in and for the first election district of the town of Gravesend at the poll of such election district for the election therein, on the 7th day of November, 1893.

Witness the signature of the president and secretary of said organization, this 1st day of November, 1893.

ALBERT A. WRAY,  
Secretary.

WM. J. BUTTLING,  
President.

A. M. STRATTON,  
Ex-Member.

H. R. WILLIAMS,  
President Rep. Ass'n.

(ENDORSED.)

*Abstract of the Election Law as to Rights and Privileges of*  
WATCHERS AT THE POLLS.

Section I. \* \* \* \* \*

No person shall be admitted within the guard-rail during such period (from the opening of the polls until the close of the canvass) except such inspectors, poll clerks, ballot clerks, duly authorized watchers, etc.

Section 102. Each political party duly filing certificates of nomination of candidates for offices to be filled at any such election, may, by writings signed by the committee, or other similar representative of such organization, or by the chairman thereof, and delivered to one of the inspectors of election, appoint not more than two watchers to attend each polling place thereof. No such committee or representative for a town or ward shall appoint watchers for any polling place outside such town or ward. Such watchers may be present at such polling place and within the guard-rail from at least fifteen minutes before the unlocking and examination of any ballot-box, at the opening of the polls of such election, until after the announcement of the result of the canvass of the votes cast thereat and the signing of the certificates thereof, by the inspectors.

Section 114. \* \* \* \* \*

If requested by any watcher the inspectors or canvassers shall, during the canvass, exhibit any and all ballots cast at such election or town meeting to such watcher fully opened, and in such a condition that he may fully and carefully read and examine the same, but such inspector or canvasser shall not allow any such ballot to be taken from his hands.

When an inspector of election or other election officer, or duly authorized watcher, shall, during a canvass of the votes, or immediately after the completion thereof, declare his belief that any particular ballot, paster, or paster ballot affixed thereto, has been written upon or marked in any way for the purpose of identifi-

cation, the inspectors or canvassers shall write on the back of such ballots the words "objected to because marked for the purpose of identification," or words in substance to that effect, and sign their names thereto, and attach each such ballot to their written statement of the result of the canvass. Each such ballot shall be counted by them the same as if not so objected to.

The attention of watchers is also called to the following provision of the Penal Code, viz.:

Section 411. Any election officer or watcher, who,

1st. Reveals to another person the name of any candidate for whom a voter has voted; or

2d. Communicates to another person his opinion, belief or impression as to how or for whom a voter has voted; or

3d. Places a mark upon a ballot, or does any other act, by which one ballot can be distinguished from another, is punishable by imprisonment for not less than six months nor more than one year.

## DOCUMENT NO. 29.

[COMMUNICATION No. 13.]

(In Response to Resolution 108, Vol. 1, Page 729.)

Communication from the Secretary of State in reply to the resolution of Mr. Van Denbergh, reported favorably by the Judiciary Committee of date July tenth.

## JUDGES OF THE COURT OF APPEALS.

NAME.	Beginning of term.	Age begin- ning term.	Expiration of term.	Term of service.		
				Yrs.	Mos.	Days.
Charles J. Folger (1).....	May 20, 1880.	61	Nov. 14, 1881.	1	6	....
Charles Andrews (2).....	Jan. 1, 1882.	55	Dec. 31, 1882.	1	..	....
William C. Ruger (3).....	Jan. 1, 1883.	58	Jan. 14, 1892.	9	..	14
Robert Earl (4).....	Jan. 19, 1892.	67	Dec. 31, 1892.	..	11	12
Charles Andrews (5).....	Jan. 1, 1893.	65	Dec. 31, 1897.	5	..	....

(1) Appointed by Governor, vice Church, deceased; elected November 2, 1880; resigned November 14, 1881.

(2) Appointed by Governor, vice Folger, resigned.

(3) Elected November, 1882; died, January 14, 1892.

(4) Appointed by Governor, vice Ruger, deceased.

(5) Elected November 8, 1892; term will expire by disability of age.

## ASSOCIATE JUDGES OF THE COURT OF APPEALS.

Francis M. Finch (1).....	May 25, 1880.	52	Dec. 31, 1881.	1	7	6
Benjamin F. Tracy (2).....	Dec. 8, 1881.	51	Dec. 31, 1882.	1	..	23
Francis M. Finch (3).....	Jan. 1, 1882.	54	Dec. 31, 1895.	14	..	....
Charles Andrews (4).....	Jan. 1, 1883.	56	Dec. 31, 1884.	2	..	....
Charles A. Rapallo (5).....	Jan. 1, 1885.	62	Dec. 28, 1887.	3	..	....
Charles Andrews (6).....	Jan. 1, 1885.	58	Dec. 31, 1892.	8	..	....
Rufus W. Peckham (7).....	Jan. 1, 1887.	48	Dec. 31, 1900.	14	..	....
John Clinton Gray (8).....	Jan. 25, 1888.	45	Dec. 31, 1888.	..	11	6
John Clinton Gray (9).....	Jan. 1, 1889.	46	Dec. 31, 1902.	14	..	....
Denis O'Brien (10).....	Jan. 1, 1890.	52	Dec. 31, 1903.	14	..	....
Isaac Maynard (11).....	Jan. 19, 1892.	54	Dec. 31, 1893.	1	11	12
Edward T. Bartlett (12)....	Jan. 1, 1894.	52	Dec. 31, 1907.	14	..	....
Robert Earl (13).....	Jan. 1, 1891.	66	Dec. 31, 1894.	4	..	....

(1) Appointed by Governor, vice Folger, appointed Chief Judge.

(2) Appointed by Governor, vice Andrews, appointed Chief Judge.

(3) Elected November, 1881. Full term.

(4) Appointed by Governor, vice Tracy.

(5) Elected November, 1884. Died December 28, 1887.

(6) Elected November, 1884.

(7) Elected November, 1886. Full term.

(8) Appointed by Governor, vice Rapallo, deceased.

(9) Elected November, 1888. Full term.

(10) Elected November, 1889. Full term.

(11) Appointed by Governor, vice Earl, appointed Chief Judge. Reappointed Dec. 30, 1892.

(12) Elected November 7, 1893. Full term.

(13) Elected November 7, 1890.



## JUSTICES OF THE SUPREME COURT.

## FIRST DISTRICT.

NAME.	Beginning of term.	Age begin- ning term.	Expiration of term.	Term of service.		
				Yrs.	Mos.	Days.
George P. Andrews (1).....Jan.	1, 1884.	48	Dec. 31, 1897.	14	..	....
Charles H. Van Brunt (1).....Jan.	1, 1884.	48	Dec. 31, 1897.	14	..	....
George C. Barrett (1).....Jan.	1, 1886.	47	Dec. 31, 1899.	14	..	....
Edward Patterson (1).....Jan.	1, 1887.	47	Dec. 31, 1900.	14	..	....
Morgan J. O'Brien (1).....Jan.	1, 1888.	35	Dec. 31, 1901.	14	..	....
Abraham R. Lawrence (1)....Jan.	1, 1888.	55	Dec. 31, 1901.	14	..	....
George L. Ingraham (2)....April 30,	1891.	43	Dec. 31, 1891.	..	8	....
George L. Ingraham (1)....Jan.	1, 1892.	44	Dec. 31, 1905.	14	..	....

(1) Full term.

(2) Appointed by Governor, vice John R. Brady, deceased.

## JUSTICES OF THE SUPREME COURT.

## SECOND DISTRICT.

Edgar M. Cullen (1).....Jan.	1, 1880.	37	Dec. 31, 1894.	14	..	....
Charles F. Brown (1).....Jan.	1, 1883.	38	Dec. 31, 1896.	14	..	....
Willard Bartlett (1).....Jan.	1, 1884.	37	Dec. 31, 1897.	14	..	....
Joseph F. Barnard (2).....Jan.	1, 1886.	62	Dec. 31, 1893.	8	..	....
Jackson O. Dykman (3)....Jan.	1, 1890.	63	Dec. 31, 1896.	7	..	....
Calvin E. Pratt (3).....Jan.	1, 1892.	63	Dec. 31, 1898.	7	..	....
William J. Gaynor (1).....Jan.	1, 1894.	42	Dec. 31, 1907.	14	..	....

(1) Full term.

(2) Term expired by disability of age.

(3) Term will expire by disability of age.

## JUSTICES OF THE SUPREME COURT.

## THIRD DISTRICT.

Rufus W. Peckham (1).....Jan.	1, 1884.	45	Dec. 31, 1886.	3	..	....
Alton B. Parker (2).....Nov. 11,	1885.	33	Dec. 31, 1886.	1	1	19
Charles R. Ingalls (3).....Jan.	1, 1886.	66	Dec. 31, 1889.	4	..	....
William R. Learned (3)....Jan.	1, 1885.	63	Dec. 31, 1891.	7	..	....
Alton B. Parker (4).....Jan.	1, 1887.	34	Dec. 31, 1900.	14	..	....
Stephen L. Mayham (5)....Jan.	3, 1887.	61	Dec. 31, 1887.	1	..	....
Samuel Edwards (6).....Jan.	3, 1887.	47	Dec. 31, 1887.	1	..	....
Stephen L. Mayham (7)....Jan.	1, 1888.	62	Dec. 31, 1896.	9	..	....
Samuel Edwards (4).....Jan.	1, 1888.	48	Dec. 31, 1901.	14	..	....
Edgar L. Fursman (4).....Jan.	1, 1890.	51	Dec. 31, 1903.	14	..	....
D. Cady Herrick (4).....Jan.	1, 1892.	45	Dec. 31, 1905.	14	..	....

(1) Elected to Court of Appeals, November, 1886.

(2) Appointed by Governor, vice Westbrook, deceased.

(3) Term expired by disability of age.

(4) Full term.

(5) Appointed by Governor, vice Peckham, elected to Court of Appeals.

(6) Appointed by Governor, vice Osborn, deceased.

(7) Term will expire by disability of age.

## JUSTICES OF THE SUPREME COURT.

## FOURTH DISTRICT.

NAME.	Beginning of term.	Age begin- ning term.	Expiration of term.	Term of service.		
				Yrs.	Mos.	Days.
Frothingham Fish (1).....Jan.	1, 1884.	64	Dec. 31, 1890.	6	..	....
Joseph Potter (1).....Jan.	1, 1886.	64	Dec. 31, 1891.	6	..	....
Judson S. Landon (2).....Jan.	1, 1888.	55	Dec. 31, 1901.	14	..	....
John R. Putnam (3).....Jan.	1, 1888.	57	Dec. 31, 1900.	13	..	....
S. Alonzo Kellogg (2).....Jan.	1, 1891.	52	Dec. 31, 1904.	14	..	....
Leslie W. Russell (2).....Jan.	1, 1892.	51	Dec. 31, 1905.	14	..	....
Martin L. Stover (2).....Jan.	1, 1892.	46	Dec. 31, 1905.	14	..	....

(1) Term expired by disability of age.

(2) Full term.

(3) Term will expire by disability of age.

## JUSTICES OF THE SUPREME COURT.

## FIFTH DISTRICT.

John C. Churchill (1).....Jan.	18, 1881.	59	Dec. 31, 1881.	..	11	13
John C. Churchill (2).....Jan.	1, 1882.	60	Dec. 31, 1891.	10	..	....
Irving G. Vann (3).....Jan.	1, 1882.	40	Dec. 31, 1895.	14	..	....
Pardon C. Williams (3)....Jan.	1, 1884.	54	Dec. 31, 1897.	14	..	....
George N. Kennedy (2)....Jan.	1, 1884.	62	Dec. 31, 1892.	8	..	....
George A. Hardin (3).....Jan.	1, 1886.	53	Dec. 31, 1899.	14	..	....
Milton H. Merwin (3).....Jan.	1, 1889.	56	Dec. 31, 1902.	14	..	....
Maurice L. Wright (3).....Jan.	1, 1892.	46	Dec. 31, 1905.	14	..	....
Peter B. McLennan (3).....Jan.	1, 1893.	42	Dec. 31, 1906.	14	..	....

(1) Appointed by Governor, vice Noxon, deceased.

(2) Term expired by disability of age.

(3) Full term.

## JUSTICES OF THE SUPREME COURT.

## SIXTH DISTRICT.

NAME.	Beginning of term.	Age begin- ning term.	Expiration of term.	Term of service.		
				Yrs.	Mos.	Days.
H. Boardman Smith (1).....Jan.	1, 1884.	58	Feb. 29, 1888.	4	2	....
Francis R. Gilbert (2).....May	5, 1887.	56	Dec. 31, 1887.	..	8	....
Charles E. Parker (3) .....Jan.	1, 1888.	51	Dec. 31, 1901.	14	..	....
Gerrit A. Forbes (3).....Jan.	1, 1888.	51	Dec. 31, 1901.	14	..	....
Walter L. Smith (4).....Mar.	1, 1888.	31	Dec. 31, 1888.	..	10	....
David L. Follett (3) .....Jan.	1, 1889.	52	Dec. 31, 1902.	14	..	....
Walter L. Smith (3).....Jan.	1, 1889.	32	Dec. 31, 1902.	14	..	....
Celora E. Martin (5).....Jan.	1, 1892.	57	Dec. 31, 1904.	13	..	....

(1) Resigned February 29, 1888.

(2) Appointed by Governor, vice Murray, removed.

(3) Full term.

(4) Appointed by Governor, vice H. Boardman Smith, resigned.

(5) Term will expire by disability of age.

## JUSTICES OF THE SUPREME COURT.

## SEVENTH DISTRICT.

William Rumsey (1).....Jan.	1, 1881.	39	Dec. 31, 1894.	14	..	....
James L. Angle.....Jan.	1, 1884.	65	Dec. 31, 1888.	5	..	....
George B. Bradley.....Jan.	1, 1884.	59	Dec. 31, 1895.	11	..	....
William H. Adams (2).....Jan.	1, 1888.	46	Dec. 31, 1901.	14	..	....
John M. Davy (3).....Jan.	1, 1889.	53	Dec. 31, 1902.	14	..	....
Charles C. Dwight.....Jan.	1, 1892.	61	Dec. 31, 1900.	9	..	....
Francis A. Macomber (4)...Jan.	1, 1893.	65	Oct. 14, 1893.	..	9	14
George F. Yeoman (5).....Nov. 10, 1893.		47	Dec. 31, 1894.	1	1	20

(1) Full term.

(2) Full term.

(3) Full term.

(4) Elected November, 1892; died October 14, 1893.

(5) Appointed by Governor, vice Macomber, deceased.

## JUSTICES OF THE SUPREME COURT.

## EIGHTH DISTRICT.

Loran L. Lewis (1).....Jan.	1, 1883.	57	Dec. 31, 1895.	11	..	....
Thomas Corlett (2).....Jan.	1, 1884.	62	April 19, 1891.	7	3	19
Henry A. Childs (3).....Jan.	1, 1884.	47	Dec. 31, 1897.	14	..	....
John S. Lambert (3).....Jan.	1, 1890.	38	Dec. 31, 1903.	14	..	....
Albert Haight (3).....Jan.	1, 1891.	48	Dec. 31, 1904.	14	..	....
Hamilton Ward (4).....May	1, 1891.	61	Dec. 31, 1891.	..	8	....
Manly C. Green (3).....Jan.	1, 1892.	48	Dec. 31, 1905.	14	..	....
Hamilton Ward .....Jan.	1, 1892.	62	Dec. 31, 1899.	8	..	....

(1) Term will expire by disability of age.

(2) Elected November, 1883; died April 19, 1891.

(3) Full term.

(4) Appointed by Governor, vice Corlett, deceased.

## DOCUMENT NO. 30.

(In Response to Resolution No. 14; see Vol. 1, Page 934.)

STATEMENT SHOWING THE POPULATION OF THE  
STATE OF NEW YORK, ACCORDING TO  
THE ENUMERATION OF 1892.Whole number of inhabitants in each county, classified as citizens  
and aliens:

County.	Total inhabitants.	Total citizens.	Total aliens.
Albany . . . . .	167,289	156,748	10,541
Allegany . . . . .	43,131	42,644	487
Broome . . . . .	62,793	61,591	1,202
Cattaraugus . . . . .	61,744	59,700	2,074
Cayuga . . . . .	62,816	60,579	2,237
Chautauqua . . . . .	78,900	73,884	5,016
Chemung . . . . .	47,223	45,845	1,378
Chenango . . . . .	37,602	37,121	481
Clinton . . . . .	46,601	44,518	2,083
Columbia . . . . .	45,205	43,990	1,215
Cortland . . . . .	28,271	27,955	316
Delaware . . . . .	45,488	44,985	503
Dutchess . . . . .	78,342	75,078	3,264
Erie . . . . .	347,328	304,713	42,615
Essex . . . . .	33,110	32,092	1,018
Franklin . . . . .	39,817	37,025	2,792
Fulton . . . . .	38,478	37,285	1,193
Genesee . . . . .	33,436	32,328	1,108
Greene . . . . .	31,141	30,843	298
Hamilton . . . . .	5,216	4,784	432
Herkimer . . . . .	47,491	45,769	1,722
Jefferson . . . . .	70,358	66,245	4,113
Kings . . . . .	995,276	868,983	126,293
Lewis . . . . .	30,248	29,414	834
Livingston . . . . .	37,010	35,448	1,562
Madison . . . . .	42,206	41,674	532
Monroe . . . . .	200,056	181,230	18,826
Montgomery . . . . .	46,081	43,831	2,250
New York . . . . .	1,801,739	1,423,984	377,755
Niagara . . . . .	64,378	59,161	5,217
Oneida . . . . .	123,756	117,205	6,551
Onondaga . . . . .	150,808	142,058	8,750
Ontario . . . . .	48,718	46,974	1,744
Orange . . . . .	97,760	93,271	4,489
Orleans . . . . .	30,762	28,732	2,030
Oswego . . . . .	70,970	69,023	1,947
Otsego . . . . .	50,361	49,862	499

County.	Total inhabitants.	Total citizens.	Total aliens.
Putnam . . . . .	14,230	13,325	905
Queens . . . . .	141,805	123,974	17,831
Rensselaer . . . . .	128,923	121,679	7,244
Richmond . . . . .	53,452	46,592	6,860
Rockland . . . . .	33,726	31,325	2,401
St. Lawrence . . . . .	86,254	80,679	5,575
Saratoga . . . . .	57,301	54,909	2,392
Schenectady . . . . .	34,194	31,630	2,564
Schoharie . . . . .	28,815	28,668	147
Schuyler . . . . .	16,861	16,326	535
Seneca . . . . .	26,542	25,928	614
Steuben . . . . .	82,468	81,400	1,068
Suffolk . . . . .	63,572	58,872	4,700
Sullivan . . . . .	31,860	31,438	422
Tioga . . . . .	29,675	29,365	310
Tompkins . . . . .	33,612	33,159	453
Ulster . . . . .	87,652	85,392	2,260
Warren . . . . .	28,618	28,157	461
Washington . . . . .	46,458	45,144	1,314
Wayne . . . . .	48,262	46,538	1,724
Westchester . . . . .	145,106	129,224	15,882
Wyoming . . . . .	31,218	30,253	965
Yates . . . . .	20,801	20,316	485
Total.....	6,513,344	5,790,865	722,479

## ERIE COUNTY.

## BUFFALO CITY.

Ward.	Total inhabitants.	Total citizens.	Total aliens.
First . . . . .	6,696	6,061	635
Second . . . . .	8,549	8,062	487
Third . . . . .	12,403	10,936	1,467
Fourth . . . . .	10,833	9,795	1,038
Fifth . . . . .	9,421	8,127	694
Sixth . . . . .	8,907	7,819	1,103
Seventh . . . . .	9,034	11,747	742
Eighth . . . . .	9,178	8,481	697
Ninth . . . . .	15,081	11,288	3,793
Tenth . . . . .	7,955	4,906	1,049
Eleventh . . . . .	19,087	12,345	6,752
Twelfth . . . . .	8,069	6,954	1,118
Thirteenth . . . . .	9,338	8,290	1,039
Fourteenth . . . . .	18,296	13,144	5,152
Fifteenth . . . . .	19,046	18,561	475
Sixteenth . . . . .	18,294	17,677	617
Seventeenth . . . . .	12,825	12,049	776
Eighteenth . . . . .	15,404	13,469	1,926
Nineteenth . . . . .	9,313	7,616	1,697

# CONSTITUTIONAL CONVENTION.

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Ward.	Total inhabitants.	Total citizens.	Total aliens.
Twentieth . . . . .	8,831	7,755	1,076
Twenty-first . . . . .	12,405	11,635	770
Twenty-second . . . . .	11,102	9,631	1,471
Twenty-third . . . . .	11,128	10,213	915
Twenty-fourth . . . . .	13,000	11,485	1,514
Twenty-fifth . . . . .	14,681	12,328	2,353
	<u>278,796</u>	<u>239,426</u>	<u>39,370</u>

## TOWNS.

Town.	Total inhabitants.	Total citizens.	Total aliens.
Alden . . . . .	2,377	2,260	117
Amherst . . . . .	3,960	3,800	160
Aurora . . . . .	3,371	3,264	107
Boston . . . . .	1,247	1,154	93
Brant . . . . .	1,387	1,282	105
Cheektowaga . . . . .	3,250	2,987	263
Clarence . . . . .	3,151	2,815	336
Colden . . . . .	1,384	1,367	17
Collins . . . . .	2,203	2,158	45
Concord . . . . .	4,067	3,944	123
Eden . . . . .	2,206	2,164	42
Elma . . . . .	2,159	2,103	56
Evans . . . . .	2,599	2,503	96
East Hamburg . . . . .	2,351	2,244	107
Grand Island . . . . .	1,022	930	92
Hamburg . . . . .	3,915	3,763	152
Holland . . . . .	1,706	1,689	17
Lancaster . . . . .	4,172	4,012	160
Marilla . . . . .	1,502	1,488	14
Newstead . . . . .	3,689	3,590	99
North Collins . . . . .	2,010	1,977	33
Sardinia . . . . .	1,663	1,648	15
Tonawanda . . . . .	8,372	7,647	725
Wales . . . . .	1,229	1,210	19
West Seneca . . . . .	<u>3,374</u>	<u>3,152</u>	<u>222</u>

## KINGS COUNTY.

## BROOKLYN CITY.

Ward.	Total inhabitants.	Total citizens.	Total aliens.
First . . . . .	22,784	18,150	3,650
Second . . . . .	10,529	7,379	3,150
Third . . . . .	24,440	20,202	3,987
Fourth . . . . .	15,580	13,983	1,597
Fifth . . . . .	19,175	16,463	2,712
Sixth . . . . .	48,939	40,435	8,504
Seventh . . . . .	39,490	35,319	4,171
Eighth . . . . .	43,758	36,609	5,759
Ninth . . . . .	21,048	19,284	1,800
Tenth . . . . .	50,318	43,386	6,932
Eleventh . . . . .	25,107	23,823	2,384
Twelfth . . . . .	31,734	27,254	5,480
Thirteenth . . . . .	24,282	22,119	2,163
Fourteenth . . . . .	32,629	26,459	6,170
Fifteenth . . . . .	30,319	27,915	2,404
Sixteenth . . . . .	51,152	40,785	10,367
Seventeenth . . . . .	46,315	41,710	4,605
Eighteenth . . . . .	95,844	84,570	11,274
Nineteenth . . . . .	38,192	34,741	3,457
Twentieth . . . . .	26,120	23,022	3,098
Twenty-first . . . . .	57,362	50,813	6,549
Twenty-second . . . . .	57,807	50,542	7,265
Twenty-third . . . . .	33,292	30,620	2,672
Twenty-fourth . . . . .	17,888	15,924	1,964
Twenty-fifth . . . . .	56,682	52,355	4,327
Twenty-sixth . . . . .	38,541	32,542	5,999
	<hr/> 957,163	<hr/> 834,218	<hr/> 122,945

## TOWNS.

Town.	Total inhabitants.	Total citizens.	Total aliens.
Flatbush . . . . .	12,625	11,548	1,077
Flatlands . . . . .	4,234	3,772	462
Gravesend . . . . .	8,418	7,873	545
New Utrecht . . . . .	9,129	7,898	1,231

MONROE COUNTY.

ROCHESTER CITY.

Ward.	Total inhabitants.	Total citizens.	Total aliens.
First . . . . .	2,393	1,920	473
Second . . . . .	3,916	3,404	512
Third . . . . .	6,542	5,881	661
Fourth . . . . .	4,027	3,617	410
Fifth . . . . .	9,598	8,656	942
Sixth . . . . .	5,363	4,562	801
Seventh . . . . .	7,788	7,279	509
Eighth . . . . .	15,802	14,869	1,033
Ninth . . . . .	9,483	8,235	1,248
Tenth . . . . .	6,375	5,652	723
Eleventh . . . . .	9,015	8,374	641
Twelfth . . . . .	8,641	8,062	579
Thirteenth . . . . .	13,559	11,556	2,003
Fourteenth . . . . .	6,681	6,097	584
Fifteenth . . . . .	8,311	7,662	649
Sixteenth . . . . .	25,236	22,071	3,165
Inmates of institutions.....	2,104	1,558	546
Inmates of institutions, Monroe county at large . . . . .	850	790	60
	<hr/> 144,834	<hr/> 129,355	<hr/> 15,474

TOWNS.

Town.	Total inhabitants.	Total citizens.	Total aliens.
Brighton . . . . .	3,314	2,959	359
Chili . . . . .	2,216	2,115	101
Clarkson . . . . .	1,721	1,664	57
Gates . . . . .	3,103	2,226	877
Greece . . . . .	5,063	4,888	175
Hamlin . . . . .	2,364	2,167	197
Henrietta . . . . .	2,141	2,033	108
Irondequoit . . . . .	2,363	2,038	325
Mendon . . . . .	3,067	2,971	96
Ogden . . . . .	2,572	2,484	88
Parma . . . . .	2,796	2,654	142
Penfield . . . . .	2,831	2,772	59
Perinton . . . . .	4,672	4,573	99
Pittsford . . . . .	2,134	2,055	79
Riga . . . . .	1,933	1,881	52
Rush . . . . .	1,656	1,542	114
Sweden . . . . .	4,982	4,821	161
Webster . . . . .	3,045	2,928	117
Wheatland . . . . .	2,400	2,314	86



## REVISED RECORD.

## NEW YORK COUNTY.

## NEW YORK CITY.

Ward.	Total inhabitants.	Total citizens.	Total aliens.
First . . . . .	39,846	36,253	3,593
Second . . . . .	44,124	11,546	6,929
Third . . . . .	48,433	32,331	16,128
Fourth . . . . .	67,104	47,110	20,294
Fifth . . . . .	38,257	28,855	9,402
Sixth . . . . .	77,067	47,823	28,208
Seventh . . . . .	48,531	41,662	6,896
Eighth . . . . .	89,262	49,161	41,101
Ninth . . . . .	50,368	44,119	6,349
Tenth . . . . .	62,333	45,277	17,956
Eleventh . . . . .	39,811	29,208	9,803
Twelfth . . . . .	58,153	40,882	17,371
Thirteenth . . . . .	53,972	45,851	18,001
Fourteenth . . . . .	41,570	34,127	7,423
Fifteenth . . . . .	75,597	68,301	7,078
Sixteenth . . . . .	51,358	42,485	8,868
Seventeenth . . . . .	91,128	81,730	9,417
Eighteenth . . . . .	59,481	48,304	11,173
Nineteenth . . . . .	177,370	158,141	19,211
Twentieth . . . . .	65,879	50,210	15,634
Twenty-first . . . . .	15,728	51,282	14,446
Twenty-second . . . . .	167,583	137,492	30,347
Twenty-third . . . . .	178,536	144,855	33,384
Twenty-fourth . . . . .	108,297	88,328	19,830
	<hr/> 1,801,739	<hr/> 1,423,984	<hr/> 377,755

## ONONDAGA COUNTY.

## SYRACUSE CITY.

Ward.	Total inhabitants.	Total citizens.	Total aliens.
First . . . . .	5,118	4,830	288
Second . . . . .	10,986	10,108	878
Third . . . . .	8,250	7,327	923
Fourth . . . . .	6,631	6,145	486
Fifth . . . . .	10,570	10,083	487
Sixth . . . . .	5,717	5,351	366
Seventh . . . . .	10,588	9,520	1,068
Eighth . . . . .	5,346	5,091	255
Ninth . . . . .	4,865	4,571	294
Tenth . . . . .	3,456	3,181	275
Eleventh . . . . .	3,671	3,569	102
Twelfth . . . . .	8,445	7,704	741

# CONSTITUTIONAL CONVENTION.

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Ward.	Total inhabitants.	Total citizens.	Total aliens.
Thirteenth . . . . .	4,716	4,429	287
Fourteenth . . . . .	3,280	3,147	133
Inmates of institutions . . . . .	801	732	69
	<hr/> 91,944	<hr/> 85,288	<hr/> 6,656

## TOWNS.

Town.	Total inhabitants.	Total citizens.	Total aliens.
Camillus . . . . .	2,522	2,474	48
Cicero . . . . .	2,553	2,481	72
Clay . . . . .	2,498	2,462	36
Dewitt . . . . .	5,182	5,033	139
Elbridge . . . . .	3,808	3,758	50
Fabius . . . . .	1,776	1,755	21
Geddes . . . . .	1,783	1,422	361
La Fayette . . . . .	1,702	1,673	29
Lysander . . . . .	5,012	4,910	102
Manlius . . . . .	5,518	5,420	98
Marcellus . . . . .	2,644	2,525	119
Onondaga . . . . .	5,011	4,684	327
Otisco . . . . .	1,311	1,298	13
Pompey . . . . .	2,771	2,744	27
Salina . . . . .	3,493	3,233	260
Skaneateles . . . . .	4,994	4,748	246
Spafford . . . . .	1,210	1,186	24
Tully . . . . .	1,378	1,373	5
Van Buren . . . . .	3,575	3,489	86

## DOCUMENT NO. 32.

(In Response to Resolution No. 14.)

STATISTICS OF NATURALIZATION IN CERTAIN COUNTIES OF THE STATE IN RESPONSE  
TO THE RESOLUTION OF MR. ROCHE.

COUNTY.	Court.	October, 1888.	October, 1891.	October, 1892.	October, 1893.	Total, 1888.	Total, 1891.	Total, 1892.	Total, 1893.	Total Females	as in only, 1894, 1891, & 1893.
New York.....	{ Superior.....	7,735	6,871	6,035	2,621	10,734	9,087	9,743	4,754	90 3 7 }	{ 59,281 22,973 1,776
	{ Common Pleas.....	4,507	1,431	4,305	2,679	9,238	3,570	7,687	4,469		
	{ City Court of Brooklyn.....	145	169	1,155	1,883	395	326	1,447	2,180		
	{ County Court.....	5,047	3,367	4,030	2,535	6,196	4,164	5,046	3,189		
Westchester.....	{ City Court of Yonkers.....	156	103	166	63	318	138	277	102	1 4 1 }	{ 1,776 1,912 2,704 445
	{ Supreme and County.....	395	162	227	190	801	370	440	301		
	{ City Court of Albany.....	904	486	635	213	1,168	520	780	236		
	.....	56	44	141	65	59	82	213	91		
Rensselaer.....	Schenectady.....	435	301	472	120	963	502	658	212	.....	2,335
Onondaga.....	.....	856	446	979	364	1,426	865	1,550	592	.....	4,423
Monroe.....	.....	725	374	622	644	1,220	638	1,173	784	12	{ 9,247
Erie.....	{ Superior.....	1,410	913	1,491	456	1,574	1,039	2,165	654	8	
United States District Court, Eastern Dis- trict of New York, comprising Long Island and Staten Island.....		2	78	269	15	11	82	281	27	1	401

**DOCUMENT NO. 33.**

Report of the Committee on Cities on the Subject of Home Rule for Cities, in Connection with O., I. 369, Page 376, General Order No. 13.

**MAJORITY REPORT.**

The Committee on Cities reports herewith, a proposed new article on the Constitution. They have still before them the important subjects of franchises, debt limitation and other matters which the Convention have referred to them, the consideration of which is not necessary to the matter herewith presented. They will report further on these subjects at an early day. Your committee have freely availed themselves of the suggestions as to home rule contained in the propositions submitted by Mr. Holls (No. 3), by Mr. Dean (No. 22), by Mr. Speer (No. 299), by Mr. Tucker (No. 113), by Mr. Turner (No. 139), by Mr. Cady (No. 267), by Mr. Tekulsky (No. 320), by Mr. Green (No. 370), and the proposition prepared by the citizens' committee, known as the Committee of Twenty-one, and presented by Mr. C. H. Lewis (No. 127), as well as the propositions submitted to the committee by Mr. Low, formerly mayor of Brooklyn, and Mr. Banks, formerly mayor of Albany.

Your committee report the proposed article as a result of their deliberations on the entire subject treated in those propositions.

Your committee, from the first, have regarded the subject as very difficult and of very great importance; they have sought the advice and aid of other members of the Convention, have invited the mayors of all cities to be heard, and mailed to all such mayors, in addition to other matter, the draft of their proposed article, which, about ten days ago, was printed, published and distributed. They have proceeded carefully and slowly, and with care and deliberation have reached the conclusions presented by the article.

Apart from the provisions of section 11 of article 8 of the present Constitution (which affects cities only as to the debt limit, and the purposes and rate of taxation), the provisions of the present Constitution relating to cities are a single sentence in section 9 of article 8, making it the duty of the Legislature to provide for the organization of cities; and section 2 of article 10, providing that all city officers whose election or appointment is not otherwise provided for by the

Constitution, shall be elected by the electors of the city, or appointed by such authorities thereof as the Legislature may determine. These are the provisions adopted by the Constitutional Convention of 1846 — forty-eight years ago. At that time the population of the State (hundreds omitted) was 2,604,000; that of New York city was 371,000, while the population of all the cities of the State was but 573,000, or about twenty-two per cent, a little over one-fifth, of the entire population of the State. Now, the population of the State, according to the last State census, is 6,513,000; the population of New York city is 1,801,000; the population of Brooklyn is 995,000, and the population of all the cities of the State is 3,987,000, exceeding by fifty per cent the entire population of the State forty-eight years ago, and constituting sixty-one per cent of the present population of the State. By chapter 64 or the Laws of 1894, provision was made looking toward the consolidation into the Greater New York of the present cities of New York, Brooklyn, Long Island City, a considerable portion of Queens and Westchester counties and all of Richmond county. If the present cities of New York and Brooklyn, and the adjacent territory proposed to be included, are combined in the Greater New York, that city will start with a population of 3,000,000; and it is within the limits of reasonable anticipation and forethought that, before the time fixed for another Constitutional Convention, there will be 5,000,000 people residing in that great city under a single municipal administration. Outside of and beyond that are the great cities on the lakes; one, according to the last State census, with 278,000 and one with 144,000 population; the capital city with a population of 97,000; the contiguous city of Troy with a population of 64,000; Syracuse with about 92,000, and twenty-eight smaller cities, all with the just expectation of continued development and growth.

Never before in the history of the world have such prodigious aggregations of people been gathered in cities. Practically it is in this country alone that the great problems they present are to be solved by popular representative government under a written constitution.

To correctly present to the Convention the reasons for the amendments proposed, your committee deem it necessary to state what they regard as the more prominent facts in relation to the present government of cities.

We now have general laws as to counties, towns and highways. By those laws systems intended to be complete for the government of towns and counties were provided. The germ of those

laws is town and county boards clothed with full power to decide what the town or county will or will not do as to its own local affairs. That body in the county is the board of supervisors, and in the town the town board and highway commissioners. These boards, consisting of elected officers, have powers of determination and decision, which are aptly designated as powers of local legislation. In cities, so far as such powers of local legislation have been granted, they have been vested in elective bodies, usually designated as the common council. In many cities, certainly in the larger, no power of local legislation or determination at all equal to that vested in town board or boards of supervisors is so vested. In New York city — almost as large of itself as the other thirty-five cities of the State — the power of local legislation has almost entirely disappeared from the frame-work of city government. In that city, so far as your committee can learn, the common council has no essential part in the raising of taxes, the appropriation of money, or in any important function or detail of city government. The government of that city is by boards, appointed by the mayor, and at the present time holding office for terms which will not expire until after the term of the next mayor, yet to be elected. Unless present laws are changed, the next mayor of New York will practically be without power, and his principal duties will be to attend meetings of boards where he may be outvoted by associates appointed by the previous mayor, and who will hold office after his successor is installed. Such government is not government by the people; it is not representative government.

As practiced, the entire system of government for cities lacks the principle of direct responsibility. Laws as to matters purely local come from Albany, but the whole power of the State government cannot appoint a single officer to execute the law. Between these two authorities, operating from different ends on different lines, the practical responsibility of the official to the people disappears. If anything goes wrong, the local official may, and does, say that it was the fault of the Legislature, and imposes the blame on the member from St. Lawrence. The member from St. Lawrence finds that his constituents, so long as he attends to their interests, care not at all for what he may do as to the laying out of a street or building a speedway in the city of New York. It is difficult to imagine a system, based at all upon the elective principle, where there is so little actual responsibility of the official to the people. It sometimes seems to be the wonder that the government of cities under such a system is as good as it is.

But, whether the system is good or bad, your committee are convinced that the time has come — come to this Constitutional Convention — to do something to change it.

New York city has nearly one-third of the population of the State; and the Greater New York, if formed, will have nearly one-half the population of the State. Practically, the legislators from the Greater New York, if not from New York city as it now is, will control legislation as to their own city; certainly they will not be prevented except by severe partisan lines; and to force party alignment on questions of a city hall, a speedway, or a farm at St. John's-land, belittles politics and is well nigh impossible.

The cities larger than Troy constitute more than half the population of the State, and that preponderance is rapidly increasing. The prodigious aggregations of population in the Empire State have become too large to be governed as to affairs purely local, whether willingly or unwillingly, from Albany. If they go to Albany for local laws, their own representatives are there, practically making them, and making them shielded from the direct responsibility to their constituents.

One-half the population of the State are south of the northerly boundary of Yonkers, and that population is rapidly increasing. We stand face to face with the fact that the problem of popular government, not for cities alone, but for the Empire State, must be largely solved by the intelligence, the patriotism, the civic spirit and capacity for self-government of the inhabitants of those cities.

Such is the situation as your committee views it, in the light of the present Constitution, laws and administration. But added to that we have, we think, the admitted fact that in many cities, certainly in the largest, there is a feeling, shared by very many, that something should be done in this Convention to secure in some degree home rule to cities. It would be a grave responsibility for this Convention to assume, to say that nothing will be conceded to those views. Rightfully or wrongfully, it would be regarded as unjust, and that would in some degree stifle public spirit, hinder and diminish effort, and prevent the sacrifice of time and strength which patriotic endeavor for the better government of cities now unquestionably requires.

But it is easier to decide that something should be done than to decide what to do.

Your committee start at what they deem the basis of government, and, by the second and sixth sections of their proposed article, attempt to secure the best opportunity for an intelligent

and thoughtful vote, and a provision that when it is given it shall be honestly counted.

The second section of the article is tentative; it will not be pressed unless met by supplementary provisions from other committees. Its purpose is, without any additional election, to give the cities of the State an election at which nothing but municipal issues are to be determined. Such a constitutional provision your committee believe would be very beneficial to cities, both in its direct effect, and in the announcement by the people of the State, that the government of great cities is no longer to be secondary to matters of the State or the nation.

In the sixth section your committee have made a provision for cities, looking to absolute equality in the two larger parties in the registration of every voter, and the count of every vote. That will not only protect those parties, but must insure protection to any party or parties having a smaller vote. The bite of every political contest is necessarily between the two leading parties. If election officers are appointed, honestly representing the two largest parties, combination between them is practically impossible; and without such combination the votes of every other party will certainly be counted. The provision as to State election commissioners is made for this reason: The Legislature is the only place where your committee find it is absolutely or at least reasonably certain that neither political party would have such an ascendancy as to prevent its being a proper place for securing a minority representative appointed by the minority party in the State. They deem it doubtful whether such an appointment could be made under the present Constitution; for that reason they make special provision permitting, but not directing it.

If these two measures are adopted, your committee believe much is done to make easier the problem of securing some degree of constitutional independence and stability to the government of cities.

They summarize this part of their work as follows:

They require uniform charters only for new cities.

They then provide as the bone or framework of their system for two classes of officers, a mayor, limited to the short term of two years, and a common council, each to have such power as may be granted by the Legislature. They make no attempt to change the present charters of cities; but, accepting them just as they are, their first attempt is to give a certain degree of permanency to those charters. They provide for such permanency as to matters which are deemed to be purely municipal, that is as to



1. Streets and highways.
2. Parks and public places.
3. Sewers and water-works.
4. Department of fire and building.
5. Salaries of city officers and employees.
6. Changing ward boundaries.
7. Annulling a tax or assessment.
8. Membership and constituent parts of the common council.
9. Powers and duties of the common council as to matters above enumerated.

As to those matters, they provide that the charter of any city shall not be changed except as follows:

Frst. By general laws.

Second. By laws affecting either all cities of fifty thousand inhabitants or upwards, that is to say, Troy and all larger cities; or laws affecting cities of less than fifty thousand, that is to say, Utica and all the smaller cities.

Third. By the consent of the city, provision being made that that consent may be given either by officers of the city designated for that purpose or by the electors themselves.

This is a very large grant of power to cities, and it is intended and believed to be effective and permanent. In and by itself it is a larger degree of home rule than has ever before been presented by any legislative official body. It is certainly a step in that direction, and a very long one.

If nothing more comes of it, the officials of the city cannot escape responsibility for legislation on the subjects enumerated; and the Legislature itself, being without power, will be without the solicitation to interfere in such matters.

But there is believed to be in this provision an enabling power, under which, if the city responds to the call, common councils may in time be organized for cities with full and ample legislative power. There are those who believe that there should be two branches to the common council, one elected from wards or parts of the city, and the other from the city at large. Provision is made allowing that. There are those who believe that the system of cumulative or proportional voting will give all classes and peoples representation in the legislative body and that that will be a great benefit. Your committee do not believe in minority representation in administrative boards, but they believe that for legislative bodies such provisions are very proper. Under the system of cumulative voting, which is made permissive, if there

are twenty aldermen-at-large and one hundred thousand votes, any five thousand voters can make sure of representation in the city council. That will give any political party, if they have in the case stated one-twentieth of the entire votes, a chance for representation and an opportunity to have their cause heard. The important part, however, is that when those powers are once granted by the Legislature, they cannot be taken away except by general laws or general city laws. When that system is built up, the proposed provisions will prevent its going backward, except with the consent of the city. This plan presents that which your committee think is not fully contained in any of the other propositions submitted. It gives at once a large degree of home rule, and provides for more, by the growth and development of bodies exercising local legislative power, and, until such power of local legislation is developed, it continues that duty with the Legislature under strict provisions for municipal consent.

What provision should be made as to the police has been the most difficult question that has come before the committee. Your committee's view was and is, if possible, to secure a police force controlled by officials who from the method of their appointment would be independent, or at least above personal or political obligations or inducement to interfere to control elections or fail to protect citizens in the exercise of the elective franchise. The events of the Gravesend election, fresh in the minds of the whole people, are a significant warning. The town had a population, according to the State census, of 8,418; its legitimate vote could not exceed 1,600. The events of that election were, that sworn officers opened the ballot-boxes and put 2,000 ballots into the box. That was done behind a cordon of policemen with club and pistol barring every one but the conspirators from the polls, and in so doing defying and resisting the officers of the law and the processes and mandates of the Supreme Court. By such proceedings there was returned and certified a total vote of 3,672 in a total population of 8,414. A return, that 600,000 votes had been cast in New York city, or 50,000 votes in Rochester, would be no more absurd and in principle no more dangerous to the liberties and civil rights of the people. Your committee specify the Gravesend case, because there they stand on no debated ground; all the facts have been established, by the convictions of the conspirators. But they believe that in other such cases, at many other polls of election, wrongs to the elective franchise similar though less flagrant have been committed. They believe that the danger point in our system of government is at the ballot-box,

and that great frauds, exceeding those of stealth and indirection can never exist without the complicity of the officers whose duty it is to preserve order and make arrests. But your committee find no way to "take a bond of fate." A constitution which provides the best and fairest means for bringing to bear the conscience and the intelligence of the people is the best safeguard. But sudden emergencies may arise, and a constitution which gave no quick and certain means of meeting such an emergency would be fatally defective. The present Constitution seems to indicate the appropriate provision of such an emergency. It gives to the Governor the power, after a hearing, to remove district attorneys, county clerks and sheriffs. At the time the Constitution of 1846 was passed, the police force of cities, as we now understand it, hardly existed outside of New York city, and in that city it depended upon a statute passed but two years before. "Watch," "Night Watch," "Fire and Night Watch" are the words which in 1846 generally indicated, in the laws of the State, whatever protection of that kind existed in cities. The sheriff was then obviously the recognized peace officer of the State (Laws of 1845, page 69; Crocker on Sheriffs, page 33; Murfree on Sheriffs, page 1160). He is still so recognized, though in cities in less degree. Your committee believe they are conservative when they extend the provisions of the present Constitution as to the removal of sheriffs, so as to include the police commissioners or other police authorities of cities.

Your committee are sustained in this view by the fact that since this Convention has been in session the Governor has removed the sheriff of the county of Erie for misfeasance in his capacity of peace officer at an election. There is every reason why he should have the same power to remove a police official similarly guilty. The power of the Governor to remove, and, if he chooses, practically to command district attorneys, or to appoint special prosecuting officers in connection with the Attorney-General has also been exercised within a few months in the counties of Kings and Rensselaer. All that exercise of power is founded on the letter and spirit of the Constitution, as well as on the correct assumption that the preservation of the public peace, and particularly the preservation of the public peace at elections, is the duty of the State. It matters little to a citizen of Rochester if the citizens of Buffalo allow their public money to be squandered, but any disturbance of the public peace at an election, any failure of the police to protect the citizen in the lawful exercise of the elective franchise whereby a correct vote is not secured in Buffalo,

affects not only Rochester, but every city, every town and every citizen of the State.

Your committee have supplemented this provision as to the removal of police officials by the executive of the State, on charges and after hearing, by a provision that hereafter they shall not be removed without hearing, by the device of taking from the elected mayor the power of appointment and conferring it on other and inferior city officers, elected without thought that they could be authorized to exercise such a power.

Your committee believe they have been conservative. They do not claim to have solved the problem, but they believe, if the provisions which they present are adopted, there will be at once built into the framework of the State a few great and steadfast supports from the bed-rock of popular government, and they hope that the system which they present will disclose possibilities and safeguards for development, which will be a benefit alike to the city and the State. They respectfully submit their work to the judgment of the Convention.

JESSE JOHNSON,

*Chairman.*

JOHN M. FRANCIS.

TRACEY C. BECKER.

H. AUSTIN CLARK.

CEYLON H. LEWIS.

FREDERICK W. HOLLS.

MERTON E. LEWIS.

EDGAR A. SPENCER.

CHARLES B. MORTON.

JOHN COLEMAN.

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#### MINORITY REPORT.

##### *To the Constitutional Convention:*

The undersigned, a minority of the Committee on Cities, are unable to agree with the report of the majority on the accompanying proposed amendments affecting the government of cities, for the following reasons, among others:

1. The undersigned are entirely in accord with the sentiment of home rule for cities, but they believe that the amendments proposed by the majority of the committee will not adequately accomplish this purpose; that they violate the substantial principle of the "referendum," by allowing it to be taken away from the people,

and that although they authorize a municipal legislature, they omit safeguards which are essential for its proper creation, regulation and control.

2. The undersigned believe that without honest elections a Republican form of government cannot exist, and that such elections should be secured by appropriate laws, but they believe that we already have too many commissions, and they are especially opposed to the creation of a State board for the regulation of elections in cities only. The same measure of honesty should be applied to elections in cities as to those in the country, and the same methods for securing an honest vote and a fair count should be adopted for each. If there is any good reason for having city elections controlled by a State board, with or without majority and minority representation, and allowing elections in the country to be differently regulated and conducted, we have yet to hear it.

In this connection it is fair to say that it is suggested that another committee has framed or proposes to frame an appropriate amendment to extend the jurisdiction of this proposed State board to the country districts. Of course if the jurisdiction of such a board extends over the entire State, it will remove the particular objection that the board proposed by the accompanying amendment is restricted to cities.

Dated ALBANY, N. Y., *July 27, 1894.*

HENRY D. HOTCHKISS.  
W. B. DAVENPORT.  
A. BLEECKER BANKS.  
F. T. FITZGERALD.  
WM. McM. SPEER.  
EDWIN C. ROWLEY.

**DOCUMENT NO. 35.**

(In Response to Resolution No. 32, Vol. 1, Pages 66, 82.)

**STATISTICS OF NATURALIZATION IN RESPONSE TO  
RESOLUTION OF MR. LINCOLN.**

Number of persons naturalized in each county of the State of New York in the year 1893, as reported by the clerks of the courts of the several counties:

Albany . . . . .	301
Allegany . . . . .	7
Broome . . . . .	43
Cattaraugus . . . . .	20
Cayuga . . . . .	66
Chautauqua . . . . .	30
Chemung . . . . .	Not reported.
Chenango . . . . .	17
Clinton . . . . .	7
Columbia . . . . .	8
Cortland . . . . .	8
Delaware . . . . .	6
Dutchess . . . . .	64
Erie . . . . .	784
Essex . . . . .	None.
Franklin . . . . .	16
Fulton . . . . .	53
Genesee . . . . .	20
Greene . . . . .	3
Hamilton . . . . .	Not reported.
Herkimer . . . . .	26
Jefferson . . . . .	66
Kings . . . . .	5,352
Lewis . . . . .	20
Livingston . . . . .	36
Madison . . . . .	9
Monroe . . . . .	592
Montgomery . . . . .	70
New York . . . . .	9,216
Niagara . . . . .	63
Oneida . . . . .	94
Onondaga . . . . .	212
Ontario . . . . .	22
Orange . . . . .	95
Orleans . . . . .	52
Otsego . . . . .	3
Oswego . . . . .	18
Putnam . . . . .	18

Queens . . . . .	156
Rensselaer . . . . .	236
Richmond . . . . .	62
Rockland . . . . .	Not reported.
St. Lawrence . . . . .	20
Saratoga . . . . .	17
Schenectady . . . . .	91
Schoharie . . . . .	1
Schuyler . . . . .	3
Seneca . . . . .	10
Steuben . . . . .	39
Suffolk . . . . .	11
Sullivan . . . . .	8
Tioga . . . . .	5
Tompkins . . . . .	7
Ulster . . . . .	61
Warren . . . . .	Not reported.
Washington . . . . .	Not reported.
Wayne . . . . .	4
Westchester . . . . .	182
Wyoming . . . . .	9
Yates . . . . .	10

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Total number naturalized in 1893, as reported. . . . . 18,991

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Classification as to nationality of persons naturalized in the State of New York in the year 1893, as reported by the clerks of the courts of the several counties:

Germany . . . . .	5,427
Great Britain and Ireland . . . . .	2,538
England . . . . .	2,070
Ireland . . . . .	1,678
Canada . . . . .	294
Scotland . . . . .	100
Wales . . . . .	27
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Total British . . . . .	6,707
Russia . . . . .	1,837
Italy . . . . .	1,746
Austria . . . . .	1,337
Sweden and Norway . . . . .	921
Switzerland . . . . .	193
Denmark . . . . .	149
Roumania . . . . .	142
France . . . . .	120
Holland . . . . .	72
Spain . . . . .	50
Greece . . . . .	42
Poland . . . . .	40
Turkey . . . . .	31

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Belgium . . . . .	22
Hungary . . . . .	10
Barbary States . . . . .	10
Prussia . . . . .	8
Portugal . . . . .	8
Saxony . . . . .	4
South America . . . . .	2
Persia . . . . .	1
Bohemia . . . . .	1
Mexico . . . . .	1
Uruguay . . . . .	1
Honduras . . . . .	1
Luxembourg . . . . .	1
Costa Rica . . . . .	1
Venezuela . . . . .	1
Unclassified . . . . .	5



## DOCUMENT NO. 41.

[COMMUNICATION NO. 22.]

(In Response to Resolution No. 135, Vol. 2, Page 33.)

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Communication from the State Engineer and Surveyor, in Response to Resolution of the Convention of Date July Eighteenth, Giving the Estimated Cost of Improving the Various Canals of the State.

OFFICE OF THE STATE ENGINEER AND SURVEYOR,  
ALBANY, N. Y., *August 1, 1894.*

*Hon. CHARLES E. FITCH, Secretary:*

SIR.—I have the honor to submit the following report, pursuant to a resolution of the Convention, of July 18, 1894, requesting the State Engineer and Surveyor and the Superintendent of Public Works to obtain and report to it, by August first, detailed estimate of the cost of improving the various canals of the State:

Owing to the limited time available for the preparation of the several estimates called for in your resolution, it is quite impossible to do more than to call your attention to the most important features of each of the several items, and to present such data as has already been collected by this department, with such modifications as seem to be warranted by present prices and circumstances.

I. Deepening canals to nine feet.

There is no data bearing on this subject in this office, except for the Erie and Oswego canals, hence the estimate for the other canals must be treated only as rough approximations.

It should be understood that all former estimates bearing on this subject have contemplated only the raising of all banks, etc., one foot, and deepening the bottom one foot between structures. The purpose of such improvement was not to permit the passage of boats of greater draft, but to facilitate the passage of the boats already in use, by increasing the sectional area of water and thereby decreasing the resistance to traffic. This improvement would doubtless allow the boats now in use, without increasing their size, to carry fifty tons additional. Fifty tons added to the load of a horse boat, carrying two hundred and fifty tons, would add over one-fifth to its paying load. An increase of one foot draft to a

propeller and its consort, would enable them to carry an additional load of one hundred tons. If the boats should carry only the loads they now take, they could, with this improvement, save nineteen hours between Buffalo and West Troy, and single boats with twenty-five tons more load than at present, with same draft on horses, could save about six hours.

It is evident that any propeller, however actuated, would have greater power from deeper immersion.

The most serious obstacle, except of embankments, to raising the banks as proposed, would be the raising of all bridges and the changing of street grades, especially in the cities and larger towns.

In any radical plan for the improvement of the canals, the sources of water supply are of the first importance, but it is believed that the present sources would be adequate for the above improvement. However, some of the feeders have only a very slight fall toward the canal, and it would doubtless be found necessary to raise the dams at the source of supply in a few cases, and it would probably be necessary to utilize to a further degree the supply from the Genesee river.

To raise the water surface of these canals two feet would probably cost three times the amount of the estimate as shown, and to lower the bottom two feet would unquestionably increase the estimate ten-fold, as it would necessitate taking down and rebuilding nearly every structure on these canals. It would hardly seem that either of these latter plans would be judicious, in view of their great cost and the comparatively small benefits to be derived therefrom, as it would in either case still be necessary to transfer all cargoes from lake ports at Buffalo, the same as under existing conditions.

The additional handling of through freight is a large item in the cost of its transportation, and it would seem that any radical plans for canal improvement should aim to avoid the cost and delay incident thereto.

I am convinced that any plan for canal improvement, more radical than the one first above discussed, and less radical than for a ship canal of twenty feet draft, would not produce results commensurate with their cost.

As to the cost, etc., of such a ship canal, I will make a separate report in the near future.

On the Champlain canal, the present depth of water is five feet, except along the portions recently improved (about twenty-five miles or one-third of the total length), where the depth is six feet. To obtain nine feet of water in this canal, would practically mean

the annihilation of the present waterway and the rebuilding of an entirely new canal, as nearly every structure would have to be rebuilt and for economical reasons it would undoubtedly be found desirable to change a great portion of the present route. Many of the structures are already worn out and practically none of them would admit of enlargement for nine feet of water.

Moreover, it would be necessary to raise the dams at Northumberland and Cohoes, and it is almost certain that their present construction would not admit of their being raised, without practically rebuilding them.

The above will also apply to the Black River canal, which is believed to be in worse condition, physically, than the Champlain canal.

The Cayuga and Seneca canal already has the same form of prism and depth of water (seven feet) as the Erie canal, and presents no more serious obstacles to enlargement to nine feet of water, than the Erie canal.

The Oneida River canal from Brewerton to the Oswego river, about twenty miles, now has four and one-half feet depth of water, and if this be increased to nine feet, the greater part of the work must be done by deepening or else by an entire change of route.

Of the Chemung canal, all except the Seneca lake level, from Watkins to Havana (2.53 miles) has been abandoned, and as less than a dozen boats traverse this section annually, no estimate is here made for its improvement.

The following estimate indicates approximately the cost of obtaining nine feet of water in the several canals:

	Work.	Land damages.	Total.
Erie canal . . . . .	\$4,810,000	\$500,000	\$5,310,000
Oswego canal . . . . .	1,133,000	75,000	1,208,000
Champlain canal . . . . .	4,000,000	300,000	4,300,000
Black River canal. . . . .	8,800,000	80,000	8,880,000
Cayuga and Seneca canal. . . . .	240,000	20,000	260,000
Oneida River canal . . . . .	310,000	25,000	335,000
Totals . . . . .	<u>\$19,293,000</u>	<u>\$1,000,000</u>	<u>\$20,293,000</u>

In former estimates for deepening the Erie and Oswego canals, much work was contemplated that would have been of a somewhat temporary character, while a great deal of work that would of necessity have to be done, was entirely omitted. The above estimates contemplate the most permanent work possible, to the end that the cost of repairs shall be reduced to the minimum.

## 2. Cleaning the canals to seven feet depth of water.

The several canals of the State are supposed to have the following navigable depths of water, which depth is in each case regulated and defined by statute.

Erie canal, seven (7) feet.

Oswego canal, seven (7) feet.

Champlain canal, 25 miles, six (6) feet.

Champlain canal, 50 miles, five (5) feet.

Black River canal, four (4) feet.

Cayuga and Seneca canal, seven feet (7) feet.

Oneida River canal, four and one-half (4½) feet.

To obtain seven feet of water on such of the above canals as are not already designed for that depth, would necessitate a vast amount of new construction, equivalent in some cases to actually rebuilding the entire waterway. However, I infer that such was not the purpose nor intention of this inquiry, but that it was simply your intention to inquire as to the cost of cleaning the canals to their present depth.

I submit the following estimate for both plans:

	For seven feet of water.	For cleaning only.
Erie canal .....	\$600,000 00	\$600,000 00
Oswego canal .....	50,000 00	50,000 00
Champlain canal .....	2,300,000 00	150,000 00
Black River canal.....	6,400,000 00	90,000 00
Cayuga and Seneca canal.....	40,000 00	40,000 00
Oneida River canal.....	190,000 00	25,000 00

I have tried to name amounts which should not under any circumstances be exceeded, but it should be borne in mind that the above figures cover such minor repairs as should be made to structures, etc., which work is fully as important as the cleaning of the channel.

## 3. The probable cost of lengthening all locks not already lengthened to a uniform depth.

I infer that this relates only to the Erie and Oswego canals, as no systematic lengthening has been done on any of the other canals.

On the Erie canal proper, there are seventy-two locks, of which thirty-nine have already been enlarged at an average cost of about \$35,000.

Contracts have already been awarded for lengthening Erie lock No. 20, which practically makes forty locks already enlarged. Of the remaining number, five are in the series at Lockport and sixteen are in the series known as "the sixteens," between West Troy and Cohoes. Nothing has been done with these series heretofore, as

the various State Engineers have not thought it advisable to ask for the necessary appropriations, nor to recommend the work, because the benefits to be derived therefrom, did not seem to warrant the expenditure. The intention has been to lengthen such single locks as occurred between levels of considerable length, and to leave till the last, such locks as occurred in series.

The series of locks ("the sixteens") are far enough apart to be lengthened according to the standard plan without serious difficulty except cost, but the lengthening of the series at Lockport presents a different problem. It will be very expensive (they originally cost \$686,000), but an equally serious difficulty seems to be that the entire improvement must be made between the closing and opening of navigation. Owing to the concentrated character of the work and the limited available working space, this subject will tax the energies of all concerned.

On the Oswego canal there are eighteen locks, eleven of them have been enlarged to the standard Erie size of 22 by 18 feet, at about the same cost as those of the Erie canal.

On the "West Troy side-cut" there are two locks, and two more on the "Port Schuyler side-cut," which, in my opinion, should be lengthened, if all others are lengthened.

I estimate the cost of lengthening the above remaining forty-three locks to be \$2,755,000.

4. As to the probable cost of building retaining walls, wherever necessary for the most effective service.

This question hardly admits of an intelligent answer, as it does not specify whether it applies to all the canals or only to the Erie, and as the canals have been successfully operated year after year, with less of these walls than at present, it is impossible to place the limit of "most effective service."

However, it is a well-known fact that many places are now in a dangerous condition from lack of such walls, and that serious breaks and continuous leakages are being caused from the same reason. Such walls are needed on every one of the canals to a greater or less degree. Many of the old walls have been poorly built and should be promptly repaired. There are also many places where paving on the outer slopes of the banks is as necessary as retaining walls to protect against the washing of adjacent streams.

I can only answer this inquiry by saying that, in my judgment, \$1,000,000 could be used to good advantage.

Respectfully submitted,

C. W. ADAMS,

*State Engineer and Surveyor.*

## DOCUMENT NO. 42.

Communication from J. T. Brooks, Second Vice-President of the  
Pennsylvania Railway, Relative to Passes.

PENNSYLVANIA LINES WEST OF PITTSBURG.

OFFICE OF THE SECOND VICE-PRESIDENT,  
PITTSBURG, PA., July 20, 1894.

HON. JOSEPH H. CHOATE, *President Constitutional Convention,*  
*Albany, N. Y.:*

DEAR SIR.—A few days ago I learned, from an item in the newspaper, that your Convention is considering the question of prohibiting the issues of passes to public officials within the State of New York.

I desire to avail myself of the use of your honored name, in presenting this letter to the committee to whose consideration that subject is committed.

I have had a personal experience of the pass question for a quarter of a century, in connection with the lines of the Pennsylvania Railroad Company. For about eight years I have maintained, single-handed, a contest against the issue of free passes to persons occupying official positions in city, county, State and federal governments; the only exception to this statement being that I have continued to issue session passes to members of the Legislature, and, in rare instances, extending those passes after the close of the session to the end of the current year.

I have seen the evils of the pass system grow from very small beginnings to what I regard as now very great and deplorable proportions. I have tried to persuade officials of other railroad companies to follow my example, and I have endeavored to persuade the Legislature of Ohio, in which State I have always lived, on different occasions, to pass prohibitory laws on this subject, but in each instance, and always, without avail.

There was a time when public officials were content to receive occasionally a trip pass for themselves. They have learned to ask for passes for themselves, for members of their families and for political adherents and others. They not only ask for passes good over lines which are controlled by the officers to whom they apply, but they ask for passes over connecting lines to distant and remote parts of the country, good at all seasons of the year.

They not only ask for trip passes for themselves and friends, but they ask for annual passes for themselves and friends, and no matter how many passes may be granted to a single individual, if a single request be refused, the enmity of that official is aroused, and his vengeance exercised if he has an opportunity so to do.

I have known a member of the Supreme Court of the United States to apply for free transportation, the money value of which, in a single instance, was between two and three hundred dollars. Governors of States, United States Senators, members of the House of Representatives, members of every department of State government, from the Governor to the janitor, ask and expect to receive these favors.

In consequence of the position I have taken, and persisted in on this subject for several years, I have seen county auditors and State boards of equalization, who hold the power of taxation over us, exercise it tyrannically and unjustly, to the detriment of the companies I represent.

I have known of the chiefs of the executive departments in the State government combining in the capitol during sessions of the Legislature, and at other times, to wreak their vengeance upon our companies because they were not served with annual passes by our company, as by other companies.

I have known of the passage of resolutions in State Legislatures, made against the companies I represent, accompanied by unsuppressed howls of delight, for the reason that the members had not been served with passes according to their wishes and requests. I have received offers from men in public station to serve our company in their official capacity, if I would give them passes, and I have received threats from the chiefs of executive departments of State because I declined to give them annual passes, as other railroads have done.

I have seen other railroad companies issue these passes without stint to persons in all grades and stages of public life, and receive a direct pecuniary benefit therefrom, and have seen those benefits withheld from our company because I did not do as other men did, in the granting of passes.

An officer of a rival railroad company recently told me that he had taken the entire Board of Tax Commissioners of a certain State, with their families and certain friends, from a large inland city to Fortress Monroe and Washington and back home, furnishing the comforts of a Pullman car, free transportation, and all expenses of the journey, and receiving, as he said, as a direct reward thereof, a reduction on the appraisement of the property

of the company he represented, equivalent to many thousand dollars a year.

If railroad companies originally issued passes voluntarily to eminent men in public life, and from disinterested motives, the system of granting passes indiscriminately to public officials has far, and long since, outgrown the control of railroad officials, and it is now an evil of which most of them are ashamed, and of which all of them would be glad to be rid.

A pass over a railroad is the equivalent of money, and few men in civilized society are above the temptation of receiving it. In very many instances railroad companies receive a direct pecuniary equivalent of the pass which they give. In other cases the public officials who receive passes quietly enjoy the saving of money, which the passes afford them, and discharge their duties impartially, as between the railroad company and the public, precisely as if the passes had not been given.

I regard the tendency of the system pernicious in the extreme. The difference between giving a thing of money value and money itself, to a public official, is slight. If railroad officials and public officials become accustomed to the giving and receiving of things of value, the official character of the recipient being the only consideration thereof, the conscience of both railroad officials and public officials becomes demoralized and corrupted, and men on both sides soon learn that money might as well be given as passes for the purpose of controlling the action of public servants.

I have always thought that the practice of railroad companies in giving these passes to servants of the public was, and is, one important factor of the distrust and denunciation in which the common people indulge against railway corporations. It certainly needs no argument to prove that free transportation is a thing of money value, and that these passes, given to men in public life, who, in the exercise of their public functions, are required to pass upon the rights of railroad companies, as between railroad companies and the public, are given for a consideration, and, no matter what the forms or terms of courtesy on which those passes are given, the selfish and improper motive is always apparent.

The present is a good time for law-makers and officials of railroad companies to take heed of the signs of the times, and regulate their conduct according to the ancient principles of justice and patriotism.

I hope the Constitutional Convention of New York will enact a thorough provision on this subject. It is imperative that the



Convention shall find some way, if possible, by which a constitutional provision may enforce itself, for I have no hope that any Legislature can be found to be unselfish and patriotic enough to deny themselves the privileges of free transportation for themselves and friends.

There is one State in the American Union whose Constitution contains a provision prohibiting persons in the service of that State from receiving passes. That Constitution, in this respect, is a dead-letter in the State where it exists, and members of all departments of State, including herein nearly all members of the Supreme Court and of inferior courts, receive and expect, and even ask for, passes.

A constitutional provision on this subject should be broad enough to make it a misdemeanor for any person elected or appointed to any position in the service of the public, to ask or receive for themselves or any other person free transportation.

Within the last few years blackmailing legislators have been introducing bills for the taxation of sleeping-car companies, express companies and telegraph companies. The result is that passes are being issued by these various organizations in greater or less number, and telegraph passes can now be found in the pockets of nearly all members of the Legislature in all the important States.

I hope the Constitutional Convention of the great State of New York will set a noble example on this subject. If they can be made to realize the evils and the evil tendencies of the free-pass system, as it now exists, I am certain they will do so.

Yours respectfully,

J. T. BROOKS,

*Second Vice-President.*

## DOCUMENT NO. 43.

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Minority Report from Mr. Tucker, of the Committee on Suffrage,  
Dissenting from Report of said Committee on Proposed  
Amendment O., I. 194, P. 195 (Vol. 2), P. 46.

*To the Constitutional Convention:*

The undersigned, a member of your Committee on Suffrage, which committee has, by a majority vote, reported adversely upon the proposed constitutional amendment introduced by him (being Convention overture No. 195), respectfully dissenting from the conclusions of said majority, presents this minority report, and asks the adoption by this Convention of the overture, No. 195, and its separate submission to the qualified male voters of the State, at the general election at which the proposed Constitution will be submitted.

The right of voting at popular elections in this State, as fixed in 1846, is set forth in section 1 of article 2 of the present Constitution. No qualification is exacted of the voter as regards his nativity, color, property, education or language. But he must be a male citizen, of the age of twenty-one years, and must have been ascertained by proper proofs to be entitled to what the Constitution denominates the right of suffrage; and he must have been a resident for a certain period of time. This was the situation, when the numerous petitions which have been presented to your honorable body and referred to and laid before your Suffrage Committee, were prepared and signed in the earlier months of the present year.

These petitions ask this Convention to provide the machinery by which the question of striking out the word "male" from the present first section can be submitted to a decision of the qualified male voters themselves, that is to say, to the qualified male voters as they have just been defined. These qualified male voters are termed by the Constitution "The People of the State." They, and they alone, are to decide at the polls upon any amendments proposed by you to its organic law, and their verdict is to be final. Should your Convention accede to the petitioners' request, and the male voters approve of the striking out of the word "male," its result would, of course, be to admit the women of the State to the right of suffrage, equally with the men, and

upon the same conditions and qualifications as are or may be imposed on the men.

As to the number of these petitioners who have asked you in this manner to submit this question, it may be asserted, with confidence, that it exceeds that of any army of postulants which has ever made such an appeal from the governed to the governing power in any time or in any country. You have received the signatures attached to memorials prepared by the Women's Suffrage Committee of no less than 171,449 women and 119,074 men, besides those presented by the Women's Christian Temperance Union, amounting to 73,000, both men and women. In addition to this, you have had presented to you the resolutions of the State Grange Association, which claims to represent 50,000 members of both sexes, and, finally, the indorsement and approval of labor and trade unions throughout the State, attested by the officials and the seals of such organizations, as claimed, of 211,396, making its total of the memorialists who have asked for woman suffrage 624,909.

Successful demands for extensions of suffrage to persons not already entitled to it have not been a novelty in this State, and there are precedents and parallels for the granting of such extensions from colonial times down. The charter of 1691 confined the suffrage to freeholders worth forty pounds. The patriot framers of our first State Constitution imposed an ownership of a twenty-pound freehold, or a rent payment of forty shillings. In 1811 this property qualification was changed to \$250. In 1821 every white male citizen who had paid taxes or performed military or fireman's duty or highway labor received the right of suffrage. In 1846 the last vestige of property qualification was removed from white males, but it was still imposed upon colored voters. One of the most resolute struggles made in the Constitutional Convention of 1867-68 was over the attempted removal of this inequality, which still rested upon the black men of this State. It may be remarked that each of the modifications of voters' qualifications which have been referred to was made upon the urgent appeal of those disfranchised, and in accordance with the advancing spirit which demanded constantly more and more the equality of all the members of the State before the law, and their participation, to a greater degree, in the affairs of government and the control of public matters. Our ancestors believed, and acted upon the belief, that the true policy of a free government was to attach the greatest possible proportion of the people to its operations, by associating them in interest with its main-

tenance and direction as fast and as far as might be prudent. When a portion of the inhabitants, theretofore excluded, came forward, from time to time, to claim participation in the government, they did not hesitate to grant the demand. But never, in the experience of human affairs, have petitions for suffrage been presented from so numerous a body of reputable and capable citizens as those against which your Committee on Suffrage now fulminates its majority report.

When the appeal for equal suffrage for the blacks came into the Constitutional Convention of 1867, it was debated at considerable length, and arguments, such as have lately become familiar to the members of this honorable body, were brought forward and emphasized. That Convention, like the present one, did not consider the subject in a mere partisan light. A majority favored equal suffrage for colored men, but they were modest enough to remember their merely representative capacity, and that their function was not to arrogate to themselves the decision of fundamental questions, but to relegate the submission of such questions to their constituents. They, therefore, decided that that provision of the new Constitution they had framed relating to negro suffrage be separately submitted to popular vote, and the act of the Legislature of 1869 affirmed their judgment. As negro suffrage was separately submitted in 1869, the undersigned proposes that woman suffrage shall now be submitted, without decision on the part of the Convention, without expressing to the voters any preference, and simply by an act of deference towards our constituency, of a matter which belongs to them alone to determine.

Notwithstanding the absolute rejection by your Suffrage Committee of the proposition to follow this precedent and consult our constituency, the undersigned cannot believe that this Convention will refuse to the mothers, wives, sisters, and daughters of its members the same measure of opportunity and equality which its predecessor so freely gave, twenty-five years ago, to the colored men of New York. He cannot believe that it will deny this great referendum. The numerical strength of those who have addressed you is a testimony of the remarkable intellectual and educational progress of our women within the past generation. It shows that since the last previous Convention women in this country have emerged from pure domestic occupations and have come to participate largely in the affairs of the world. They now partake of the activity of the literary, scientific, artistic, industrial and business concerns of human life.

They have advanced by every path so rapidly and successfully as to revolutionize, at the end of the century, the ideas as to their place and duties which prevailed at its beginning. And it is but natural that this remarkable approximation toward equality with men in social and civil conditions should have induced aspirations for equality in civil powers and functions.

Yet the claim is persistently made that, as a mass, the women of this State do not desire this concession. Unfortunately, our political system does not afford, at this time, any means of determining, with absolute certainty, whether they do or do not. Their wishes can only be inferred from the memorials which have been here presented, in which the members who ask for suffrage are in proportion of twenty to every one who has in a similar way declined it. Since we cannot submit this question to them, at an election, and because a final decision upon the acts and proposals of this Convention can only be given by the male voters who authorized and elected it, the test, whether women do desire the ballot or not, must be had by conferring upon them the power to use it, or to refuse and neglect it, in their own discretion. But the fact that this Convention was chosen by, and directly represents only, the male citizens of the State, should, in the opinion of the undersigned, be held to impose upon it the duty of giving its constituents the opportunity to bestow upon females or to refuse to them at the polls a participation in the rights they themselves enjoy. The earnestness and the magnitude of the appeal they have made to us not only justifies, but demands such a course.

The amendment which the undersigned proposes is to be added to the first section of article 2. It will separately submit to our constituents the question of striking out the word "male." It will so submit it, without the expression by this Convention of any decision, or even any opinion, upon the merits of that question. It will do so separate from all other matters involved in the adoption or rejection of the Constitution. It suggests neither "aye" nor "nay" to the voter. It follows strictly its precedent of the negro suffrage amendment submitted to the people in 1869. In fact, its sole purpose is to use the machinery of separate submission, which the Convention act enables us to use, to refer the decision to the male voters, our constituents, disconnected from any other issue. The undersigned submits that the adoption of this simple but decisive plan will at once demonstrate our reliance upon popular judgment and our deference to a demand more

emphatically urged than any other that has been addressed to this Convention.

The undersigned, therefore, recommends the adoption by this Convention of proposed constitutional amendment No. 195, in the following language:

#### PROPOSED CONSTITUTIONAL AMENDMENT.

To amend article two of the Constitution so as to separately submit to the electors of this State the question of woman suffrage.

*The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:*

Section one of article two of the Constitution is hereby amended by adding the following words at the end thereof:

But at the general election at which this Constitution shall be submitted to the electors of this State for adoption or rejection, the question, "shall the word 'male' be stricken from article second, section one of the Constitution, and cease to be a part thereof?" shall be separately submitted to, and be decided by the said electors; and in case a majority of the electors voting at such election on that question shall decide in favor of such striking out, then, and not otherwise, the said word shall be stricken from this section, and cease to be a part thereof; and in that event every female citizen shall thereafter be entitled to vote at all elections held in this State, upon the same qualifications and conditions as are, in this section, prescribed as to male citizens. It shall be the duty of the Governor, by his proclamation, to make known the result of such election, as to the question so separately submitted, immediately upon the completion of the canvass by the State canvassers.

GIDEON J. TUCKER.

**DOCUMENT NO. 44.**

[COMMUNICATION No. 26.]

(In Response to Resolution 153, Vol. 1, Page 1033, Vol. 2, Page 165, Vol. 3, Page 76.)

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**COMMITTEE ON JUDICIARY.**

In the Matter of the Proposed Amendment, Touching Claims  
against  
The State and the Board of Claims.

*To the Hon. Elihu Root, Chairman, and to the Committee:*

The Board of Claims was created by chapter 205 of the Laws of 1883. It consists of three commissioners, appointed by the Governor, by and with the advice and consent of the Senate. The Board has a clerk, one deputy clerk, a stenographer and marshal, the latter being also the messenger of the Board. The salary of each commissioner is \$5,000, with an additional allowance of \$500 each in lieu of traveling and other expenses. The salary of the clerk is \$4,000; of the deputy clerk, \$2,500; of the stenographer, \$2,500; of the marshal, \$1,200. The Board is required to hold four stated sessions annually, at the Capitol, and such additional sessions as the business before it may require, and is required to hold sessions in various parts of the State in the vicinity where claims arise, and the Commissioners are empowered to personally view real property for injury to which claims are presented.

Originally all claims against the State were presented directly to and passed upon by the Legislature. By section 19 of article 3 of the Constitution, as now in force, it is provided that "the Legislature shall neither audit nor allow any private claim or account against the State, but may appropriate money to pay such claims as shall have been audited and allowed according to law." Prior to the creation of the Board of Claims provision for the audit and allowance of private claims was made by vesting the Canal Appraisers with jurisdiction of canal claims, and the State Board of Audit and the Comptroller with jurisdiction as to such other private claims as the Legislature, from time to time, transmitted to them. There were three Canal Appraisers at salaries of \$5,000 each, and with clerks, stenographers, messengers, etc. The State Board of Audit was composed of the Comp-

troller, State Treasurer and Attorney-General. These, as such Board of Audit, employed clerks, stenographers and other assistants. The Canal Commissioners were vested with appellate jurisdiction in cases presented to the appraisers. From the State Board of Audit appeals went to the General Term of the Supreme Court, and from there to the Court of Appeals. Under the present system all the jurisdiction heretofore exercised by the appraisers and State Board of Audit is vested in the Board of Claims, together with jurisdiction in such other cases as the Legislature, from time to time, provides. The Legislature has vested jurisdiction in the Board of Claims to determine claims of the State against certain counties for taxes, etc., and claims arising out of the action of the State Board of Health on account of the destruction of diseased animals, and, in special cases, by special acts, of claims resulting from acts of the National Guard of the State, and from injuries sustained by inmates in educational and other State institutions. The expense to the State incident to the audit and allowance of private claims against it is much less under the present system than under the former ones.

The expense of the Canal Appraisers during the last year of their existence, as stated by Governor Cleveland in his message to the Legislature of 1883, was \$39,639.20. For the same year the expense of the Canal Auditor's office was over seven thousand dollars, including Auditor's salary, while the expense of the State Board of Audit was over \$2,000, and that of the Canal Commissioners at least \$1,500, making, under the old system, the aggregate annual expense, incident to the disposition of private claims, over fifty thousand dollars. As against this, the expense under the present system, with a largely increased and extended jurisdiction, is \$26,700. Under the old system, as to these claims, the records were scattered through the offices of several departments and bureaus of the State, while at present they are preserved, properly filed and arranged in the office of the Clerk of the Board of Claims.

The volume and importance of the business transacted by the Board since its organization, June 4, 1883, is shown by the following statement:



## BOARD OF CLAIMS, ORGANIZED JUNE 4, 1883.

Salaries Commissioners . . . . .	\$16,500 00
Salaries clerks and marshal . . . . .	7,700 00
Salaries stenographer . . . . .	2,500 00

Total . . . . .	\$26,700 00
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Total number of claims presented to board . . . . .	2,571
Total number of claims decided by board . . . . .	2,121
Total number of claims pending . . . . .	450
Total amount of claims pending, exclusive of interest . . . . .	\$1,334,517 22
Total amount claimed in claims decided to January 1, 1894, exclusive of interest . . . . .	4,083,786 91
Total amount allowed in claims decided to January 1, 1894, interest included . . . . .	1,111,450 07
Total amount of claims filed since January 1, 1894, exclusive of interest . . . . .	507,228 22
Total number of claims filed since January 1, 1894 . . . . .	275
Total number of claims decided since January 1, 1894 . . . . .	395
Total amount of claims allowed since January 1, 1894, interest included . . . . .	\$100,563 77
Total amount claimed, exclusive of interest, in claims decided since January 1, 1894 . . . . .	561,218 35
Total number of appeals to Court of Appeals since organiza- tion of board . . . . .	123
Total number of reversals by Court of Appeals . . . . .	22
Total number of reversals on appeal by State . . . . .	3

Respectfully submitted,

WILBUR F. PORTER,  
HUGH REILLY,  
GEORGE M. BEEBE,

*Commissioners of Claims.*

**DOCUMENT NO. 45.**

(Communication No. 26, in Response to Resolution 153, and  
Inquiries of Judiciary Committee.)

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**COMMITTEE ON JUDICIARY.**

In the Matter of the Proposed Amendment to the Constitution  
Giving a Right of Action Against the State where, Under  
Like Circumstances, it Would Exist Against a Private Person  
and Conferring Jurisdiction to Hear and Determine the Same  
Upon the Supreme Court.

**BRIEF IN OPPOSITION TO THE PROPOSED AMENDMENT.****I.***The proposition to enlarge the liability of the State.*

The fundamental law will thereby be completely overturned and the Legislature divested of all control tending to the State's special protection. This is contrary to the constitutional provisions of every other State in the United States.

Full power exists under present laws to provide for payment of equitable claims against the State, limited only by the provisions of the existing Constitution, viz., statute of limitations, extras, etc. Special cases may thus be recognized by specific acts wherein the amount of the recovery can be limited. Every such claim is thus subjected to public scrutiny and must receive legislative and executive sanction. "The power of the Legislature is not restricted to claims founded on legal liability enforceable as against an individual by action, but in special cases where, in its judgment, justice requires, it may give power to the Board of Claims or other tribunals, to disregard defenses strictly legal, and to hear and determine claims against the State, founded in right and justice. (Cole v. The State of New York, 102 N. Y., 48.)

The amendment will throw open the courts for suits without limit or restriction, by scholars in State institutions of learning, by patients in State hospitals, by persons engaged in navigating the canals, by employes and appointees in the several public offices and public works, by contractors, and in cases of riot and injuries to or by the members of the National Guard, claims arising in the Indian reservations and by convicts in confinement.

The result will be an appalling number of actions added to a calendar of claims which already practically commands the undivided attention of one of the deputy Attorney-Generals of the State.

The extent of the damages will be thrown open to juries of the vicinage or to referees. Delays will be encouraged for the accumulation of interest.

The spirit of extravagance which so often actuates juries in actions against corporations will be further extended against the State, which, they will reason, can afford to pay liberally.

Private corporations now protect their interests in litigations only by unceasing efforts of vigilant defenders. The State, with ever-changing assistance in the capacity of both counsel and witnesses, will fail of even this protection.

All previous constitutional restrictions in this State have had solely in view to restrain and limit the power of the Legislature to extend the liability of the State. This proposition seeks to deprive the Legislature of all power of protecting the State in the direction of limiting its liability.

## II.

*The proposition to transfer claims against the State to the Supreme Court.*

The Board of Claims has now exclusive jurisdiction of these proceedings. It holds four stated sessions at the Capitol. Extra sessions at such points throughout the State as the convenience of witnesses demands are also held at such times as the engagements and preparations of the Attorney-General, State Engineer and Department of Public Works will permit. This concentrates the business for the State's counsel to an extent and with advantages that need not be described.

Under the new liability, as proposed, within nearly every county in the State one or more of the conditions which furnish occasion for the bringing of actions will exist and be taken advantage of.

The force of the Attorney-General's office will be inadequate to follow the various circuits and the resulting appeals. The creation of new State officers in each county, or devolving the duty on existing county officers, would increase the State salary list, and yet fail to provide concert of action in the State's behalf. The co-operation of the State Engineer's office and that of the Department of Public Works, which are required in ninety per cent of such claims, would be demanded from divers parts of the State for different claims at the same dates. Many concurring circuits must then fail to give any relief, resulting in delays injurious and

expensive to the State and vexatious to claimants. Under the present system it is rarely that any claim filed cannot be heard at the ensuing session of the Board of Claims, if the claimant is ready.

The existing complaint of insufficient opportunities for the disposal of business in the Supreme Court would be intensified. Claims frequently arise in classes and number hundreds at one time and place. Court calendars would thus be overloaded with preferred causes, which, if tried, would hamper the disposal of private litigation, and, if not, would jeopardize the State's interest. Trials during the term of office of officials and employes of the State, who are witnesses, is a very essential feature of the State's proper defense. Memory fails more quickly out of office than in it. Local sympathy as against the wealthy State of New York would decide the question of damages always against the State in favor of the neighbor. Where a number of claims of the same class existed, this and other more serious influences would be encountered.

If not heard before the jury, the court would relieve itself by the appointment of referees. The extent of the responsibility here is not always satisfactory in point of sympathy or influence. The expense of maintaining a corps of referees throughout the State would afford to the bar an unlimited source of revenue from the State. A single serious canal overflow, with a few hundred claims in suit dragging through several years, would probably entail more in referees' and stenographers' fees than the annual appropriation for the maintenance of the Board of Claims. Costs, allowances, witnesses' fees and disbursements will add to the State's liability.

The Attorney-General would be hampered by the use of pleadings. These are not now required of the State. The change of a whole staff of deputies, such as the new business would require, following elections, would leave the State's interest poorly protected. The change of judges who would hear the various claims would open the door for frauds, which would be detected or not attempted before a tribunal accustomed to such classes of cases and having sole charge thereof. The familiarity of the Board of Claims with the methods of claimants and with the witnesses who repeatedly appear against the State for them, which secures justice for the State, would be completely wanting when that jurisdiction was spread and that experience lost. The State would always be found appropriating the best land in the farm at a fancy price.

The view of the premises now exercised by the Board of Claims, a highly essential power, would not be practicable.

Responsibility for awards against the State is at present well defined, resting upon the Attorney-General and the Commissioners of the Board of Claims. How different would it be with juries, as against the State, where between methods of arriving at verdicts by "splitting the difference," etc., etc., the only responsibility would be that of the State to pay? The practice in other States is here summarized. In none is it placed beyond legislative power to limit the State's liability or change the procedure to a like extent. In Massachusetts and Nebraska, where jurisdiction is given to the courts, no such liability as is proposed is placed upon the State, and, consequently, no such classes or numbers of claims can arise. In the following States constitutional provision is made that claims shall be allowed as the Legislature shall determine: Arkansas, California, Florida, Indiana, Kentucky, North Dakota, Oregon, Pennsylvania, South Dakota, Tennessee, Wisconsin, Washington, and the statutes of Iowa similarly provide.

The Constitutions of Alabama and Illinois forbid suits against the State. In the following States statutory provision alone is made, and provides for Auditors, Comptrollers or Boards of Examiners: Arizona, Colorado, Connecticut, Georgia, Idaho, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, Ohio, Rhode Island, Texas, Vermont, Virginia, West Virginia.

In the following States, by legislative provision only, and hence necessarily subject to change and limitation, courts have jurisdiction of claims against the State, namely, Massachusetts, Nebraska, North Carolina.

In Massachusetts the Superior Court, without jury, has jurisdiction, and when the amount exceeds \$1,000 to be tried by three justices.

In Nebraska an appeal lies to district courts from State officers. In North Carolina the court can only hear and recommend to the Legislature.

T. E. HANCOCK.

Attorney-General.

## DOCUMENT NO. 46.

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In the Matter of the Consent Respecting the Seats of Delegates from the Sixth Senatorial District, in the State Constitutional Convention.

### CONTESTEES' POINTS — SIXTH SENATE DISTRICT.

THE ALLEGED CLAIM OF THE CONTESTANTS, THAT FRAUDULENT VOTES WERE CAST IN THE TOWN OF GRAVESEND, HAS NOT BEEN ESTABLISHED BY PROOF, BUT, ON THE CONTRARY, HAS BEEN OVERWHELMINGLY DISPROVED.

There was no proof offered by the contestants showing that there was colonization of illegal voters, no proof of repeating, no proof that any person who had voted was not a legal voter, no proof of a fraudulent count of the ballots cast or fraudulent return made, no proof of intimidation of voters and no proof that the election in question was not conducted by the election inspectors and other election officers in the manner and form prescribed by law. The contestants' case is based on inference which is sought to be adduced from the so-called proofs introduced by them. These proofs not only do not amount to legal evidence tending to prove the facts, which it is claimed they establish, but cannot be considered proofs, even ignoring all recognized rules of evidence. The greater part of these proofs are not only hearsay, but include unsworn statements of a person not an election officer and who refused to submit to examination before the sub-Committee on Privileges and Elections.

### CONSIDERATION IN DETAIL OF THE CONTESTANTS' PROOF RELATING TO THE TOWN OF GRAVESEND.

First. The record adjudging John Y. McKane, the three inspectors of election of the sixth election district of the town of Gravesend and a justice of the peace of said town guilty of contempt of court in preventing the service of a preliminary injunction order on the inspectors of election of the several election districts in the town of Gravesend.

The original record was introduced by the contestants, a printed copy was furnished to the sub-committee by the contestees for convenience of reference. The full index to the printed record will be found following page Y. The folios herein referred to are those in the printed record above mentioned.

The contempt proceeding was instituted by William J. Gaynor, as relator. It appears by the printed record that he was a candidate for justice of the Supreme Court in the Second Judicial Department at the last general election. That on the day before the election he secretly applied to Mr. Joseph F. Barnard, then a justice of said court, upon a summons, complaint and affidavits in an action wherein he was plaintiff, and John Y. McKane and the eighteen inspectors of election of the town of Gravesend were defendants, and obtained without notices to the defendants an *ex parte* preliminary injunction order whereby the defendants were "restrained and enjoined from preventing the persons appointed or to be appointed as watchers at the election on November 7, 1893, in the several election districts of the said town of Gravesend by the Kings County Republican General Committee by its chairman or proper officers in manner and form, by a certificate such as is set out in the complaint herein, or in any other manner from entering, being or remaining in the polling places or booths of the respective election districts in the said town to which they may be appointed and having the place of watchers there and of there acting as watchers and performing all of the offices and duties thereof, etc., whether the said watchers be residents of the said town or not." (Fols. 13 to 18, inclusive.)

The complaint was verified on November 6, 1893, the day before election, and the injunction order was applied for, as aforesaid, upon and bears date on said last-mentioned day. It will be observed that the injunction order was permanent in form and gave the defendants no opportunity to be heard before it went into effect on election day.

No judgment could be taken until twenty days after the election, and the plaintiff could abandon the action after he had the benefit of the injunction on election day. The granting of the injunction was, therefore, a gross abuse of judicial power.

The complaint alleges, among other things, that "the defendants intend and have decided not to allow the watchers appointed by the organization of the Republican party in the said county to enter the pollings, booths, houses or places in said town, and to exclude them therefrom and not allow them to watch, challenge or oversee or perform their offices and duties in any way, as the plaintiff is informed and believes. That the defendant, McKane, has already declared that he has decided so to do, unless the said organization shall appoint as watchers only persons who live in the said town."

Complaint prays for judgment for an injunction to operate on seventh of November and a temporary injunction.

The affidavit of Foster, attached to complaint, has no bearing on watchers; the affidavit of McGinniss is to the effect that McKane declared on the 1st day of November, 1893, at the city of Brooklyn, that "if watchers were appointed for the election at Gravesend who do not live in said town, he would not respect them and would not allow them to be present. That, in his opinion, there was not authority to appoint a watcher for election in the town of Gravesend who did not reside in the town."

The affidavit of Hammond has no bearing on the question of watchers.

The injunction issued upon those papers on the sixth of November was permanent on its face and restrained the defendants substantially from interfering with watchers "appointed or to be appointed, whether residents of the town or not."

It will be observed that the gist of the action is the anticipated refusal of the defendants to admit watchers not residing in the town, and all of the complaint which does not bear on this question is immaterial and irrelevant as to the right to appoint watchers, irrespective of the places of residences.

It appeared from the uncontradicted affidavits and testimony that watchers were duly appointed for the six districts of Gravesend on the 6th of November, 1893, by certificate set forth in the injunction order, and those watchers were installed as such at the polls before the opening thereof according to law on the morning of election.

That thereafter on election morning a large number of persons, residents of the city of Brooklyn, appeared at the town hall in Gravesend, where the polling places were located, some of whom demanded admission as Republican watchers. Those persons had watchers' certificates, which had been issued in blank by the president of the Republican General Committee, and delivered to the said William J. Gaynor, the plaintiff in said action (after the appointment of the Republican watchers who had been installed as aforesaid), who filled in, or caused to be filled in, said blanks the names of such persons as he saw fit, neither the president of said Republican committee or any other persons authorized to appoint watchers having selected any such persons or having any knowledge of who they were. (Fols. 1225 to 1233, inclusive.)

Those persons were not recognized as watchers, but were refused admission and informed that Republican watchers regularly appointed had already been installed, and upon insisting clamor-



ously and in a disorderly manner for admission, notwithstanding Republican watchers to the limit allowed by law were acting, and on attempting to force themselves in, were removed from the polls and three of them were arrested for disorderly conduct. At the time of demanding admission to the polls as watchers the order of injunction was served, or attempted to be served, on some of the persons, without, however, the papers on which it was issued, and subsequently proceedings were instituted before Mr. Justice Barnard to punish the parties above referred to for contempt in wilfully resisting the service of said order, and the persons so proceeded against were convicted of contempt and sentenced severally to imprisonment for thirty days in the Kings county jail, and fined, in addition, the sum of \$250.

By section 102 of chapter 680 of the Laws of 1892, commonly known as the "General Election Laws," it is provided as follows:

"Section 102. Watchers, challengers, electioneering.— Each political party duly filing certificates of nomination of candidates for offices to be filled at any such election, may by writing, signed by the committee or any similar representative of such organization or by the chairman thereof, and delivered to one of the inspectors of election, appoint not more than two watchers to attend each polling place thereof. No such committee or representative for a town or ward shall appoint watchers for any polling place outside such town or ward."

First. The committee may appoint, or other similar representative of such organization. None other.

This, of course, must be by resolution or vote or organized action of some kind.

Second. The appointment must be indorsed by a writing signed by the committee or other similar representative of such organization, or by the chairman thereof, and delivered to one of the inspectors of election.

Third. No such committee or representative for a town or ward shall appoint watchers for any polling place outside such town or ward.

By section 2 of subdivision 4 of article 5 of the By-laws of the Republican General Committee of Kings county, entitled "Conduct of Campaigns," it is provided, amongst other things: "The president of the district association shall also have the power to appoint and may at will remove all watchers, challengers, custodians of ballots and election booths and such aids around the polls of his district, on election day, as may be authorized by law or by

the action of his ward or town committee, and shall have full command of the working force at the polls in his districts."

By section 2 of article 11 of said by-laws it is provided:

"Section 2. Secretary.—The secretary shall be the custodian of all blank enrollment books and other blanks of every character authorized by and prepared under the direction of this committee, and shall, from time to time, distribute the same as instructed."

The blank appointments of watchers were the custody of the secretary under the foregoing by-law.

By the ballot law it was evidently intended that the committee or representative of a town or ward should have the right to appoint watchers.

"No such committee of a town or ward shall appoint watchers for any polling place outside such town or ward."

The president of the general committee had no right to appoint watchers. He could merely certify by writing that such appointments had been made.

But by the statute itself the town committee could appoint. (See the ballot act and rule of the general committee.)

The certificates of the watchers at Gravesend on election day installed by the inspectors were on the regular blanks of the general committee, signed by the president and secretary, and delivered to their town organization under section 2 of article 2 of by-laws, and were also signed by the representative of the town committee and executive member of the general committee for the town.

Those watchers were duly installed on the delivery of the certificates to the inspectors before the polls opened, and at least fifteen minutes before any ballot-box was opened, as required by the ballot law.

They were so installed by the inspectors of election, the only officers having jurisdiction in the premises

The watchers' certificates produced by the men brought to the town by Messrs. Bacon and Grout, were absolutely void.

They were a part of fifty certificates which had been delivered in blank to Mr. Johnson, he or some other person filling out the names of watchers, town and election districts. Mr. Johnson was a member of the general committee for the Twentieth Ward of the city of Brooklyn. He had no authority under the statute to appoint watchers for any polling place in the town of Gravesend or elsewhere (pages 298, 299 and fols. 1225 to 1233), and the chairman of the general committee did not intend to revoke the certificates issued under the by-laws of the town officers. (See his testimony

in the contest preceding pages 298, 299, and fols. 1226 to 1233 of contempt record.)

But two watchers could be legally appointed for each polling place. That would be twelve for the whole town of Gravesend. It would be a crime to allow more than that number to act. (See ballot law hereinbefore quoted.)

It was the duty of the police authorities stationed at the polls to preserve order, to protect the persons so installed as watchers in the discharge of their duties, the inspectors then installed, and it was the duty of the police to recognize and protect them in the discharge of their duties and to remove the persons holding void certificates from interfering with the watchers regularly installed. The ballot law required them to do so by its provisions.

There was, therefore, no violation of the injunction order by disobeying it. But the defendants were technically guilty of contempt of court in obstructing and preventing the service of the order on the election inspectors.

Judge Barnard, however, instead of confining his decision to the question before him delivered a written opinion in adjudging the parties guilty of contempt in which he not only assumed the truth of the allegations in the complaint and papers upon which the injunction order was granted, but he ignores the undisputed facts that watchers regularly appointed, in the manner prescribed in the injunction order, acted at the election in question and many other undisputed facts set forth in the opposing affidavits in the contempt proceedings.

See the uncontradicted testimony of William J. Buttlng, chairman of the Republican General Committee of Kings county (fol. 1226), the uncontradicted affidavits of David P. Watkins, clerk of the executive committee of the Republican General Committee of Kings county (fol. 659), of Anson M. Stratton, member of the executive committee for the town of Gravesend of the Republican General Committee of Kings county (fol. 308), of Henry R. Williams, the president of the Republican Association of the town of Gravesend (fol 320), of the twelve Republican watchers who acted at the election (fols. 536, 506, 527, 548, 557, 566, 575, 584, 593, 608, 617, 626), of the eighteen inspectors of election, Republican and Democratic. (Fols. 359, 368, 665, 710, 740, 764, 779, 797, 806, 815, 824, 833, 866, 788, 977, 842, 749, 692.)

The affidavit of John Y. McKane (fols. 248 to 306) replies to and answers the allegations and statements in the affidavit and papers which were the foundation of the contempt proceedings. This affidavit sets forth the facts relating to the registration, the popula-

tion of the town of Gravesend, the election in question and the events preceding and on election day referred to in the contempt proceedings. A careful reading of this affidavit is respectfully requested, as many of the important facts set forth in it are uncontradicted.

The affidavit above mentioned of William J. Buttling, David P. Watkins, Anson M. Stratton, John Y. McKane and one of each of the eighteen inspectors of election and twelve Republican watchers (the affidavits of all the other inspectors and watchers being similar in form), will be found printed in the record of the proceedings on the contest before the sub-Committee on Privileges and Elections (Doc. No. 28), at pages 337 to 366.

Second. The indictment against John Y. McKane (exhibit, see page 63), charging him with counseling, advising, aiding and abetting the inspectors of election of the first election district of the town of Gravesend not to render the registry list of that election district and copies thereof accessible for examination and copying by the public, and the record of his conviction and sentence under said indictment.

The election law (chap. 680, Laws 1892, sec. 33) provides that the election inspectors shall make three certified copies of the registry list, one of which shall forthwith be conspicuously posted in the place where the meeting for the registration of voters shall be held, and one shall be retained by each of the two inspectors, and the original by the chairman until the close of the polls on election day, and then provides as follows:

"Such list and registry of voters and the certified copies thereof, shall at all reasonable hours be accessible to the public for examination or for making copies thereof."

The offense consisted in the alleged violation of this provision, which was made a felony. The commission of this offense did not render the election held void and it could be committed notwithstanding that the election held thereafter was in all respects honestly conducted. This record certainly does not prove that fraudulent votes were cast or a false return made.

Third. The pleas of guilty to the indictment against the inspectors of election of the town of Gravesend charging them with conspiracy in that they unlawfully agreed together "to permit and suffer persons to vote who were not entitled to vote at the general election held in the said town on the 7th day of November, 1893," the sentences varying from twenty-nine days in the county jail to six months in the penitentiary. (See pages 60 to 63.)

It will be observed that the offense is that they agreed to permit persons to vote who were not entitled to vote. This offense is a mere misdemeanor, and was complete before election day as soon as the agreement was entered into and an overt act such as refusing to permit the registry lists to be copied, was committed. It was not necessary that persons were actually permitted to vote in order to be guilty of the offense charged. Indeed, they could be guilty of the offense charged, although it should be shown by undisputed evidence that they did not permit any person to vote who was not entitled to vote.

These inspectors were not indicted for actually permitting persons to vote who were not entitled to vote. They were, however, indicted for the same offense of which John Y. McKane was convicted and sentenced to six years' imprisonment in Sing Sing. (See page 68.) This offense was neglecting to keep the registry lists and the copies thereof at all reasonable hours accessible to the public for the purpose of examination and making copies thereof. It was a more serious offense than the misdemeanor to which they pleaded guilty. It was a felony, and to escape a trial for this graven offense and the risk of conviction likely to follow in view of the intense public excitement at the time caused by the newspaper clamor which resulted in the conviction of McKane, the inspectors evidently, although innocent, pleaded guilty to the lesser offense, believing that they would thereby avoid the fate of McKane.

Fourth. The testimony given on behalf of the contestants to prove that there was not legal voters in the town of Gravesend to the number returned as having voted in the six election districts of said town.

Charles H. Murch a resident of the city of Brooklyn, arrived at the polling place in the town of Gravesend at 10.30 o'clock A. M. (P. 152.) He found crowds standing around. (P. 153.) Remained there from one hour and a half to two hours; couldn't tell if the crowds of people were waiting to vote. (P. 153.) He says: "I didn't notice because they all stood around in groups and crowds. \* \* \* I saw a great many coming—they came in stages with teams and some in single wagons and common four-wheeled wagons." (P. 154.)

The witness never lived in the town of Gravesend but during the campaign between October 17 and November 7, 1893, he drove through the town, putting up lithographs for the Republican candidate for Assembly. (P. 155.) He says: "As to the second district, from what I saw the eight or nine times I went through the

district, I could not see over five hundred voters throughout this district. (P. 158.) I live in the city of Brooklyn. I never lived at Coney Island. I drove there. I can only mention one name of a person I know there. (P. 158.) The five hundred voters of the second district keep hotels. I cannot mention their names — not one. (P. 159.) I made no list of people who resided there. I didn't inquire as to what people were entitled to vote in the second district. My estimate is based on riding through there and looking around and taking in the surroundings." (P. 161.)

Robert L. Brackett, a resident of the first election district, looked over the poll-list with a few persons after election. He says we knew only 230 voters. (P. 163.) Remembers twelve names that he found on the poll-list that he didn't know. (P. 163.) At the spring election, held in April, 1894, there were 1,923 votes cast. (P. 165.) There was little interest taken at spring elections before the last. (P. 166.) There was sixty legal voters at the spring election that he didn't know. (Pp. 166, 167.)

Charles C. Overton, a resident of the second election district, says he arrived at the polls at about nine o'clock A. M., on election day.

"Q. How long did you remain there? A. I remained there until the polls were closed, off and on; I was there when the polls closed." (P. 222.)

On cross-examination he contradicted this testimony by admitting that he was not at the polls all day; that he left and went to the city of Brooklyn, and that he was at the polls off and on only about four hours and that there might be many lines of voters that he didn't observe. (P. 227.) Without ever having made a canvass or otherwise showing himself qualified to state, he gives as his opinion that the legal voters of the town are about the number cast at the spring election held in April, 1894. (P. 224.) Attention is directed to the affidavit this witness made on behalf of the defendants in the contempt proceedings. (Fol. 932, printed book of papers in contempt proceedings.)

Charles C. Voorhies says he made a canvass by taking the registry lists and poll-lists and he and his partner (the witness Richard Schermerhorn) and a few other gentlemen selected the names they knew and checked them off. He also inquired of one or two storekeepers and the postmaster, and estimated the legal voters to be 1,734. (Pp. 241, 242.)

Richard Schermerhorn, a resident of Brooklyn, the partner of the last-named witness, did not consider it a canvass, but simply an estimate. (P. 230.)

James W. Brewster, without having made a canvass or any inquiry, boldly asserts that in his opinion the voters in the second district do not exceed five hundred. (P. 243.)

James W. Pierce, without having made a canvass or any inquiry, also states that in his opinion the legal voters in the second district is between four hundred and fifty and five hundred. (P. 253.)

Herman W. Cropsey states that the voting population of the first district is 300 (p. 250), and in the town 1,900 or 2,000. (P. 250.)

On cross-examination he says he went over that part of the district in vicinity of the immediate neighborhood where he resided and got others to go over the other districts and formed his estimate from this information. (P. 252.)

It needs no argument to show how absurd is the claim that this testimony is proof, showing that the number of legal voters in the town of Gravesend, at the time of the election in question, was less than the number voting, as appears by the poll-lists and the sworn returns of the election inspectors. Yet this is all the testimony offered by the contestants on that subject. It is fair to assume that the contestants' counsel, in relying upon this testimony, believed that this Constitutional Convention claimed to be non-partisan; admitted to be the dignified body proved by the unanimous report of its Judiciary Committee, unanimously adopted by the Convention in the matter of the writ of prohibition in the Trapper case; would stoop to the practices of both parties in the Senate and Assembly in some instances in the past and unseat members of the minority party on insufficient evidence for purely partisan advantage.

Had the contestees followed the poor example of the counsel for the contestants in this respect they could have prolonged this investigation to an interminable length by calling scores of witnesses to give opposite opinions as to the number of legal voters in the town of Gravesend at the time of the election in question.

The contestants' counsel has made reference in his brief to the testimony of Charles C. Foster. (Pp. 237 to 241.) It is claimed that this testimony proves that names to be entered on the registry lists were obtained by two policemen in the month of August, 1893. A careful perusal of the entire testimony of this witness is respectfully requested. It will be observed that he is careful not to leave an opportunity for contradiction. He does not mention the names or numbers of the two policemen, nor the name of any person but himself whose name was taken by the policemen. It is a conclusion of his own that the names were taken to be registered. He says (p. 241):

"Q. Then you did register, did you? A. Well, they took my name at least. I suppose I registered."

It is hardly necessary to state that the contestees were not required to call the entire police force of the town of Gravesend to prove that two unnamed policemen did not gather names in August, 1893, to be placed on the registry list in October, 1893.

This testimony is of no value for the reason that if names were taken by two policemen in August, 1893, as stated by the witness, it may have been for some police purpose such as enumeration. There is no proof that the names were entered on the registry list, much less that they were voted upon at the election.

The table of comparison between the registry lists and poll-lists is unfair and incorrect. It strikes the mind as a novel method of proving the casting of illegal votes. It certainly cannot be accepted by any fair mind as evidence of such fact. In some few instances it shows coincidence of persons voting in consecutive order as their names appear on the registry list not an impossibility by any means. It may be explained by the fact that the voters were gathered together in stages and wagons and brought to the polls as shown by the testimony of Charles H. Murch (p. 153), a witness for the contestants. It may be explained in other ways. However, it would be absurd to require the contestees to explain it under penalty of being deprived of their seats in the Convention. If a large number of fraudulent votes were cast as alleged by the contestants, it seems extraordinary that they did not offer proof that at least one name appearing on the registry lists was fraudulently placed there or that at least one person voted who had no right to vote and this, after the great length of time which has elapsed since the election, during which it is fair to assume they made a thorough investigation.

Fifth. The written statement signed by Kenneth F. Sutherland, relating to the casting of fraudulent votes, read in court at the time he was sentenced.

In this statement, Sutherland, among other things, says:

"From my knowledge of the election of 1893, held at Gravesend, including the direct I had and the knowledge which came to me indirectly, I estimate the number of fictitious votes cast at that election in the second election district to have been between eight and nine hundred. \* \* \* (P. 274.)  
"I folded with my own hands, two lots of paper ballots, each



"100 or 200 in number, which were fictitiously cast in my presence  
"on that day." (P. 274.)

When subpoenaed before the sub-committee, Sutherland refused to be sworn or answer any questions in relation to the matter, or even acknowledge that he made the statement or state whether it was true, or give any reasons for refusing the requests of the sub-committee. (Pp. 210 to 213.)

The statement is not sworn to, it was read in court by Deputy Attorney-General Shepard at the time sentence was passed upon Sutherland and Mr. Shepard asked the court to take the facts surrounding Sutherland into consideration, and not to inflict a long sentence. (Pp. 217, 218.)

Sutherland was not an election officer, he was a justice of the peace of the town of Gravesend; in the month of March last had been convicted of oppression in causing the unlawful arrest of three persons a few days before the election, he fled and a sentence was pronounced against him in his absence, that he serve one year in the penitentiary and pay a fine of \$500.

His return to the jurisdiction of the court was the evident result of an arrangement with the prosecuting attorneys by which he should make the statement in question, the forfeited bail bonds would be remitted and he would receive a light additional sentence under the indictment to which he pleaded guilty. He, therefore, had a considerable personal interest in signing the statement in question and in making it as sensational as possible and have it accord with the theory of the prosecuting attorney to whose mercy he was left. While it is not here intended to be intimated or understood that any part of the contents of this statement was suggested by Mr. Shepard, the deputy Attorney-General, it is charged that Sutherland had strong personal motives in making a statement of the character of the one in question.

But this statement is not proof; it is not sworn to, it is not made by an election officer, it is not corroborated, on the contrary it is contradicted by eighteen sworn affidavits of the inspectors of election, Democratic and Republican, and by twelve sworn affidavits of the Republican watchers. The affidavits referred to are those in the contempt proceedings hereinbefore referred to. Each inspector swears "there was no fraudulent voting on election day at said polling place, nor any fraudulent practices in the conduct of said election at said polling place, so far as deponent was enabled to ascertain by performing his duties as said inspector of election aforesaid."

Each Republican watcher swears to precisely the same facts.

Thirty sworn affidavits in contradiction of this unsworn statement, with the further consideration that the two ballot and poll clerks in each polling place, sworn election officers, must have been cognizant of, and parties to the alleged frauds if they were committed. None of them, nor was any witness called to corroborate him, even if his statement was sworn testimony and he had submitted to cross-examination, the great preponderance of evidence would, under the circumstances, be overwhelmingly against its truth.

THE CLAIM MADE ON BEHALF OF THE CONTESTANTS THAT 1,512 VOTES COULD NOT BE CAST IN THE SECOND ELECTION DISTRICT OF THE TOWN OF GRAVESEND, BETWEEN THE OPENING AND CLOSING OF THE POLLS ON THE DAY OF THE ELECTION IN QUESTION, IS ABSURD.

Edward Sweeny, a justice of the peace of the town of Flatbush, which adjoins the town of Gravesend in Kings county, testified that he was one of the inspectors of election at the spring election held on the first Tuesday in April, 1893, in the town of Flatbush. That said election was conducted as one election district in the same manner and form as general elections are held and under the same provisions of the general election law with the exception that instead of one registry list being used they used the eight which were used at the preceding general election in the eight election districts in that town. The use of eight registry books, however, consumed more time in receiving votes than if only one registry list was used for the reason that in many instances the voter on presenting himself to receive his ballots preparatory to voting would not remember the number of the election district in which he resided and there would be a delay of other voters while the eight different registry lists were being examined to find his name before he received his ballots. At the spring election in question there was 1,685 votes cast, although there was an intermission of about three-quarters of an hour at noon while the town meeting was being held, during which time voting was entirely suspended. The actual voting time was less than at the last general election, there was no continuous line of voters and no hurrying and several hundred more votes could have been cast without difficulty. Four different party ballots were used as at a general election; they had to be folded by the voter and checked off by numbers by the ballot and poll clerks as at a general election and all the formula was observed as at a general election, and the fact that there was not as many offices to be filled as at a general election did not dispense with any

of the forms which had to be followed under the election the same as prescribed for a general election. (Pages 286 to 295.)

George Smith, the town clerk of Flatbush, corroborates the witness, Edward Sweeny, as to the voting and manner of conducting the said spring election held in Flatbush, April, 1893. He also says there was no crowds or lines of voters, no hurrying or pushing during the election, and that 300 votes could have been cast in addition to the 1,685 which were actually cast at that election. (Pages 314 to 317.)

THE CENSUS OF THE TOWN OF GRAVESEND TAKEN IN THE EARLY PART OF THE MONTH OF FEBRUARY, 1892, SHOWING A POPULATION OF BUT 8,418, IS NOT EVIDENCE OF THE ACTUAL POPULATION OF THAT TOWN IN NOVEMBER, 1893.

Anson M. Stratton, an active Republican of the town of Gravesend, the only member of the Republican General Committee of Kings county from said town and also the member for said town of the executive committee of said Republican General Committee, testified that he has been a resident of said town for the last ten years and has been a resident of said town for the last ten years and has been present at every election held therein during that time. That there is a very large vote in the second and third election districts of said town. That during the last three years there has been a very large number of buildings erected in the town. That during the summer season there is a very large amount of business at Coney Island (which is included in said election districts) such as hotels, music halls, shows of various kinds, liquor and refreshment saloons. That there are about eight million visitors every summer season to Coney Island and between 5,000 and 10,000 help are employed in the different hotels, shows, places of amusement, etc., mostly males, who go there without families in the month of May and that the greater number of them reside there until after the election held in the fall, and that they having acquired the legal voting residence of four months in the county and thirty days in the election district, they register and vote. That there is at least the same number each year although the individual employes are not always the same. (Pages 304, 305.) That there is not as much interest taken in the spring elections (which are held in April) as in the fall elections, and many who reside and vote in the town in the fall leave the town and seek employment elsewhere during the winter and do not return to vote in the spring. (Page 308.) That they do not return until the opening of the summer season, and that about 10,000 males are then employed at Coney Island as

waiters, cooks, bartenders, cashiers, assistants, etc. (Pages 310 to 314.) That out of 108 buildings on one plot of ground 750 feet wide, ninety-eight have been erected within the last three years, and that they are all (except two dwelling houses) used for hotels, places of amusement, saloons, etc. And that the vote has been increasing from 3,000 every year. (Page 310.)

This testimony was not contradicted nor was the affidavit of John Y. McKane (printed at end of document 28) covering the same points.

THE FACT THAT THE REGISTRY LIST CONTAINED 6,216 NAMES, WHILE THE VOTE CAST WAS BUT 3,600 IS READILY EXPLAINED.

These registry lists were not prepared as are registry lists in cities where personal applications for registry is required. The registry lists in question contained the names of the voters taken from the poll-lists of the general election held the preceding year in addition to the names registered in 1893. That there was several thousand names of persons appearing on the poll-lists of 1892, who would not be voters in 1893, is quite likely in view of the testimony of Anson M. Stratton (above quoted), that of the 10,000 males employed at Coney Island from the opening of the season in the summer until after the fall election, a great number would be replaced each season by different individuals, although the total number was the same. (Page 304.) The inspectors, however, were required by the election law to copy into the registry lists the names on the poll-lists of the preceding year. The total vote (3,600), cast in 1893, was, however, only a few hundred more than the vote cast at the preceding general election, and the difference was only the natural increase of the rapidly growing town as shown by the testimony of Anson M. Stratton (above quoted).

THE REGULARITY OF THE REPUBLICAN WATCHERS WHO ACTED AT THE ELECTION IN QUESTION WAS PROVED WITHOUT CONTRADICTION.

See testimony of William J. Buttlings, sheriff of Kings county and chairman of the Republican General Committee of Kings county. (Pp. 295 to 300.)

Of David P. Watkins, clerk of the Republican Campaign Committee of Kings county. (Pp. 300 to 301.)

Of Anson M. Stratton, member for Gravesend, of the Republican General Committee, and Executive Committee of Kings county. (Pp. 301 to 304.)

See, also, the affidavits of the Republican watchers and inspectors of election and the affidavit of Henry R. Williams, the president of the Republican Association of the town of Gravesend, above referred to, printed at end of document 28.

I.

THE EVIDENCE CONCERNING ALLEGED IRREGULARITIES AND FRAUDS  
IN RICHMOND COUNTY.

*Assisted Voters.*

The contestants have attempted to prove that electors of the eighth and ninth districts of Castleton, not suffering from any physical disability within the law, improperly obtained assistance on election day in the preparation of their ballots. Henry D. Joy is their only witness on this subject (18-46). He was the physician of the Harbor and made a physical examination of fifty-six inmates on December 26, 1893. He repeatedly says in the course of his testimony that he made no examination of any of these individuals on or prior to election day for the purpose of ascertaining whether they were able to vote then without assistance. He does not testify that they were physically competent on election day. His direct testimony is all in the present tense and relates on its face to the condition of these men at the time he was testifying. Substantially all that he says upon the subject is as follows: (P. 25.)

Q. You are acquainted with the physical condition of these gentlemen, are you not? A. I am.

Q. Are any of them disabled from folding a ballot, by sight or otherwise? A. No, sir.

Q. They are all able to vote without assistance? A. Yes.

The witness does not say either as a matter of fact or opinion that the persons referred to were fully capable of voting unaided on election day.

Upon his redirect-examination he says that none of them was suffering from any disease which would prevent them from folding a ballot or from voting on election day. (P. 44.) This, however, has no reference except to their condition on December 26, 1893, the date on which he examined them.

The inmates of the institution were necessarily aged, decrepit and worn out, otherwise they would not have been admitted. (P. 124.) They were all suffering from some form of disease.

The doctor, in his cross-examination, admits that many of the persons examined by him may have been suffering on election day from some temporary ailment or some form of intermittent

disease which rendered assistance in voting necessary and proper, and he declines to swear positively that they were able to vote unassisted.

In his examination on December 26, 1893, he applied no practical tests for the purpose of ascertaining then their physical ability to prepare a ballot for voting. He simply made a cursory examination of the condition of their hands and eyes at the time, and would have the inference arbitrarily drawn from that, that they were all able to vote without aid on election day.

It is evident from the witness's testimony that no such conclusion can be reached because it would leave totally out of consideration temporary and intermittent forms of disease which might have rendered the persons in question totally incapable of voting unassisted on election day; and which, nevertheless, might not be present at the time of their examination. This is manifest from his admissions on cross-examination. Thus he says (p. 33), with respect to a man named Britto:

Q. Is it not a fact that men in advanced age may at times be so incapacitated by reason of chronic rheumatism, from using their hands for the purpose of folding a paper or any other article of that kind? A. It is.

Q. Then you are not prepared to swear that this man is not the victim of intermittent rheumatism? A. No, sir; I am not.

Q. Of your own personal knowledge you are not prepared to swear that at the time he cast a ballot at the election held in November last, he was capable or incapable of the physical ability to cast that vote? A. I am not prepared to swear to any such statement as that, of course.

Again he testifies concerning J. Coventry (p. 37), as follows:

Q. Doctor, are you prepared to swear that this last-named individual had not been, prior to last election, subject to intermittent attacks of rheumatism or other complaints or diseases which would temporarily incapacitate him from the free and undisturbed use of his hands and fingers, etc.? A. No, sir.

Q. And you never made any examination of him to ascertain his physical ability to enter a booth and vote without assistance, under the provisions of section 104 of the Election Law of the State of New York until on or about the twenty-sixth day of December last, did you? A. No, sir.

And finally with respect to them all, he says (p. 43):

Q. Doctor, of all the persons whose names appear upon that list which you have read off before cross-examination, had you

made an examination as to the physical condition of either of them prior to election day last year? A. No, sir.

Q. Are you able to state under oath, that either of these individuals whose names are contained upon this list was capable of exercising freely his physical ability to enter a voting booth alone and to prepare his ballot, without assistance, according to the provisions of section 104 of the election laws, or any other law, from your own personal knowledge? A. No, sir.

Q. Did you, during the examination of either of these individuals on the twenty-sixth day of December, subsequently to election, ask any of them to fold a ballot or any paper that bore a semblance to a ballot, to enable you to judge whether or not they were capable of folding a ballot upon that date? A. No, sir.

Q. Is it not a fact that in some cases an individual suffering from rheumatism, or incipient paralysis, or incipient paresis, may be unable to perform an act to-day without assistance, which three months hence he will be able to, by reason of the changed conditions in his physical ability to perform the act? A. It is possible.

From this testimony it is apparent that the doctor's evidence has absolutely no value in determining the question whether the persons named were physically able to vote on election day or not, and this is true unless the matter is to be decided upon conjecture pure and simple. The difficulty is with the character of the evidence. It established the physical capacity of these men in December 26, 1893, but not on November 7, 1893. Why did not the contestants produce direct evidence of the physical condition of these men on the latter date? The contestants could have subpoenaed their companions, room-mates and the officials who were in personal contact with them then, and proof of that kind would have been almost conclusive. It is plain from the whole of the evidence relating to Richmond county, introduced on this contest, that sympathies of the officials of the Harbor were actively enlisted in behalf of the contestants and that every facility was afforded them in aid of their investigations and their efforts to obtain evidence. The mere absence, therefore, of such direct testimony upon the subject of the physical condition of these men on election day raised a very strong presumption against the assertions of the contestants in this regard.

There is another objection to the evidence of the contestants upon this question. The identity of the persons examined by the doctor with the persons recorded on the poll-lists as having voted on election day, is not established. This was a most important

element of their proof. The evidence repeatedly shows that there were many persons of the same name in the institution. (Pp. 18 to 46.) Over and over again the doctor admitted his lack of all personal knowledge of the personal identity of the individual respecting whom he was testifying. (Pp. 18 to 46.) He relied upon a list in his hands during his examination, from which he gave almost his entire testimony. This list contained the names of the persons who were the subject of his evidence, and all other data supplied by him. He authenticates it in the following fashion (pp. 49-50):

Q. Did you personally transcribe the names of these individuals from the official list of the Sailors' Snug Harbor of names to this or any other paper? A. I transferred it from a list that was given to me.

Q. By whom? A. From the Governor's office; I think it was given to me by one of the clerks.

Q. What is his name? A. I think, Mr. Cox.

Q. Don't you know? A. No; I am not positive.

Q. You don't know who gave it to you? A. No; or it might have been another person; I do not remember.

And at page 58 he says:

Q. You never compared it with the official list to see if it was right? A. No.

With this unauthenticated list in his hand he swore that he knew all the persons mentioned in it and knew them to be inmates of the institution although he was unable to recall the personal identity of many of them. He made a physical examination of certain persons, some of whom he knew and some of whom he did not know personally. Practically, therefore, we are asked to take the doctor's statements from the list and his physical examination as satisfactory proof that these persons were the same persons who voted with assistance on election day; and all this in view of the undoubted fact that many persons of the same name and of the same surname, with different Christian names, reside in the institution.

Briefly put, the doctor's physical examination of these persons was made too late, and any opinions based upon it are necessarily valueless; and further it has not been shown that the persons examined by him were actually these who were assisted in voting on election day.

There is no claim made by the contestants that the alleged assisted voters were not legal residents of and voters in the election districts in question. The only claim is that they were able to



vote without assistance. Judge Cullen, at the recent Oyer and Terminer, held for the trial of election cases in Richmond county, decided that where a voter entitled to vote in an election district is unlawfully assisted, that this does not vitiate the vote, but that the vote is valid and must be counted, and that the only effect of unlawful assistance of a legal voter is the criminal prosecution and punishment of the offender. And, furthermore, there is no proof in this case for whom the assisted votes were cast.

## II.

### THE REGISTRY OF VOTERS.

#### *Eighth and Ninth Districts, Castleton.*

The contestants claim fraud in connection with the preparation of the registry lists of these districts. They assert that many names were improperly placed by the inspectors on the list. The difficulty finds its origin chiefly in the peculiarity of the situation. These districts include the Sailors' Snug Harbor, with its 850 old and feeble inmates who come from all parts of the world. Deaths are necessarily frequent among them, many of them go away in the course of a year and remain away temporarily or permanently, and thus the personnel of the inmates undergoes a continual change. It is clear that a very large percentage of the inmates are entitled to vote in the districts in which they live and have a right to be considered qualified voters and to have their names on the registry lists. Under the law applicable to rural districts there are two days set apart for the registration of voters—the third and second Saturdays preceding election day. (Section 3, Election Laws.) On the first day of registry the inspectors are required to place upon the registry list the names of all persons appearing on the poll-list of the next preceding general election in the district, except the names of voters proven to the satisfaction of such inspectors to have ceased to be voters since such general election; the names of all other persons known or proven to the satisfaction of the inspectors to be so qualified; and the names of all persons so qualified who personally appear before the inspectors and request that their names be placed thereon. On the second day only the names of such persons as personally appear and are qualified shall be placed on the list. (Section 32, Election Laws.)

Inspectors have a right to assume in the absence of knowledge to the contrary, that persons once known to them to be qualified voters continue to exist and to live in the district. They are not required to know the personal life and movements of such persons

down to the moment when they place their names upon the registry list. To hold otherwise would be to prevent the accomplishment of the plain object and purpose of the law. It provides in a simple way for the registry of a large proportion of the electors in every country district without their being subjected to the inconvenience of personal attendance. It thus insures a much larger vote on election day and much more satisfactory expression of the public judgment than would otherwise be had. The law does not contemplate absolute accuracy in the registry lists prepared pursuant to its provisions. It provides for the correction of these lists at the instance of any citizen. Thus, under sections 33, 35, 36 and 37 of the election laws, the list must be posted conspicuously in the place of registry; challenges to applicants for registry must be received and registered; and provision is made for the addition and cancellation of names. Under section 37, if the board of registry shall at any meeting, upon sufficient evidence being procured, refuse to strike from the lists the name of any person not qualified to vote, application may be made to any justice of the Supreme Court in the district, or to a county judge of the county, directing such name to be stricken from the list, "and such list shall be corrected accordingly."

Here we have easy, complete and effectual remedies placed at the command of any citizen who discovers an error in the work of the inspectors. It is not in evidence that any one, either in the interest of the contestants or otherwise, sought the correction of the registry lists in question. It does appear that letters addressed to a number of individuals in the two districts outside of the Harbor were mailed, which were afterward returned to the senders. (Pp. 264, 265.) But even if this was considered evidence at all, its force and efficiency entirely disappears in the absence of proof that letters are personally delivered by the post-office authorities in any part of Castleton. Those letters probably remained in the local post-office without being called for during the period provided in postal rules, and were then returned. Does it follow that the addressees did not live there and were not duly qualified electors?

It is mainly by means of the testimony of Albert D. Hodges, chief clerk of the Sailor's Snug Harbor, that the contestants seek to impeach these registry lists. Like Dr. Joy, he testifies from a memorandum respecting which he says (p. 108):

Q. Do you know a man in the Harbor who was in the Harbor in November or October, 1893, by the name of John Davidson?

A. I suppose I am permitted to refer to my memorandum?

Q. Yes, sir.

Mr. Taylor — What is the memorandum. A. copies of the records.

Mr. Kiendl — Made by you? A. Made by me.

Mr. Taylor — I submit that it would be no identification of the man, looking at the name.

The Chairman — He may state whether there was a man known by that name at that time.

A. I do.

The entire testimony of the witness is plainly based upon his extracts from the records. He states facts and circumstances that occurred as far back as the year 1872, although he did not enter the institution until 1890. (Pp. 108, 137.) He says:

Q. Then any evidence that you have given in regard to any person being absent from that institution prior to that time is simply an extract from the books of that institution? A. It is.

Q. And these entries in the books were first made by you? A. No, sir.

The books and records were evidently entirely at the service and command of the contestants. The officials of the institution seemed to have fairly jumped at every opportunity of serving them in any way. They made important lists, classifications and memoranda without being under the least obligation to do so. In view of all this the contestees may very well ask why were not these books and records, after being properly proven, put in as original evidence of the best character upon the subjects covered by the witness's testimony? They would have been open to the inspection of the contestees and the latter could then have intelligently tested the accuracy and truthfulness of Mr. Hodges's statement based upon them. As it was the contestees were practically deprived of all that was valuable in the important right of cross-examination so far as the testimony of this witness was concerned, and were obliged to let it go for what it might be considered worth. For this reason, if for no other, the testimony of Mr. Hodges should be disregarded.

The same question of identity that was mentioned in connection with Dr. Joy's testimony, it is submitted, is left open concerning the names mentioned by this witness. The witness continually mentions two or more persons of the same names or surnames who were or had been in the institution on election day and just previously, and in many instances it is utterly impossible to determine whether the witness is testifying respecting the person mentioned in the registry list or not.

Finally, no presumption of irregularity or fraud in elections can be drawn from the mere fact that names which apparently do not relate to any qualified voter in the district are on a registry list. Such a presumption would be extremely dangerous and would probably affect the elections in nearly every rural district in the State. It is to the actual occurrences in receiving the vote on election day that reference must be had for conclusions of this kind; and not to circumstances and events that are in themselves merely preparatory and introductory, and in respect of which perfect accuracy cannot be insured.

#### FIFTH ELECTION DISTRICT, CASTLETON.

An unprejudiced reading of the evidence upon the subject of the correction of the registry lists in this district will carry conviction that the board of registry did everything in their power under the law to make it accurate. According to Mr. Phillips, the contestants' witness, he had a list of fifty names that he desired stricken from the list. The board of registry, acting "voluntarily," struck off twenty names, and pursuant to an order of the court nineteen names were struck off. (P. 375.) It must be remembered that the board of registry could not act arbitrarily in correcting the list, their power was semi-judicial in its nature, and they could only act upon satisfactory evidence produced before them. Every presumption is in favor of their faithful discharge of the duties they were sworn to perform. It does not follow, therefore, that there was either irregularity or fraud in their refusal to strike off the nineteen names which Mr. Phillips says were the subject of Judge Cullen's order. On the contrary the only legitimate inference is that there was not sufficient evidence before the board to warrant them in so acting.

The affidavits upon which this order of Judge Cullen was granted, however, show the true facts of the situation. Before the service of the order fourteen names were stricken off by the inspectors acting judicially, as a board for the correction of the lists. After the service of the preliminary order to show cause four more names were stricken off in the same way. Five persons, whose right to registration was questioned, appeared in person and were personally known to the inspectors to be voters; and many names placed upon the registry list upon the first day of registry were satisfactorily proven to the inspectors to be qualified voters. The names directed by Judge Cullen's order to be stricken from the lists were names properly on the list, in respect of which satisfactory proof had not been adduced to warrant the board in removing them.

Can anything be plainer than that this board of registry, acting within the powers conferred upon them by law, were honestly doing everything in their power to render the registry list of their district as nearly accurate as possible. It would certainly be unjust to say that because they did not submissively obey the behests of Mr. Phillips they were necessarily engaged in committing irregularities and frauds. It is submitted that the affidavits, order to show cause and final order relating to this fifth district, demonstrate beyond all question the desire of the board to perform their whole duty and the fact that lay in their power or discretion to provide correct registry lists.

### III.

#### ALLEGED IRREGULAR VOTES.

The contestants produce twenty-five inmates of the Sailors' Snug Harbor who testify that they did not vote on election day in November, 1893, although, according to the poll-lists of the eighth and ninth districts of Castleton, they did vote.

It is a singular circumstance that the contestants find all their witnesses, upon the subject of alleged frauds in these two districts, in the Sailors' Snug Harbor. Outside of these old seamen they have not been able to produce a single resident of either district who could testify to anything questionable about the conduct of this election. The permanent residents of the place who might reasonably be expected to be cognizant of the commission of any irregularity or fraud, and to have a direct and personal interest in its exposure, are notable in this contest for their entire absence. The Sailors' Snug Harbor, with its sympathetic officials and its 850 nomadic and indifferent inmates has supplied to the contestants substantially all their thunder. With regard to these inmates the contestants occupy somewhat contradictory positions. When it suits their case they do not hesitate to say in effect that a large number of them are liars and perjurers; and on the other hand, when a smaller contingent, drawn from the same institution, testifies in their favor, they would have us believe that these and these only were telling the absolute truth. Thus, according to the contestants, no less than fifty-six of these citizens must have deliberately lied on election day when they swore to physical disabilities that entitled them to assistance in voting, and on the other hand twenty-five of them told the truth when they testified that they did not vote, although the records kept by the election officials, Democrats and Republicans, showed that they did. From this combination of belief and disbelief, implicit confidence and absolute distrust, as

applied to the same class of persons, the contestants seek to establish the most serious charges of fraud and to change the declared result of the elections.

An examination of the testimony of those who said they did not vote, discloses that some of them have very defective memories, while others are frequently amenable to the discipline of the institution by reason of their habits, and that, with respect to all of them, the important question of their distinct identity with those individuals who are recorded as having voted remains unsettled.

The testimony of Andrew D. Lewin, for instance, upon the subject of his memory, is interesting (p. 172):

Q. Do you know whether you did or did not go (to New York) the day before or the day after (election day)? A. Not positively; I have got a very defective memory.

Q. Got a bad memory? A. On account of my disposition.

Q. Never mind that. You think you have been afflicted with a defective memory? A. Well, more or less at times for twelve years.

Q. There are intervals when you forget what occurred a short time previously, are there not? A. Until I consider of the matter.

Q. And sometimes upon consideration you cannot recall everything that occurred within a short time previously, can you? A. No, sir.

And here is another sample from the testimony of Charles C. Burch (263):

Q. You cannot say that your memory is thoroughly good on politics? A. Some things I recollect very well.

Q. And yet some things political, by way of an election, may have happened, which you have forgotten? A. So they may, yes. \* \* \*

Q. You swear positively that you have not voted at any election since the presidential election? A. None that I remember.

Q. Will you swear positively that you have not voted? A. No; I will not.

The irregular habits of some of the witnesses appear to have rendered them subject to a form of punishment in the institution known by the name of "Taboo."

Thomas Cufflin (271-2) was reported at the gate for coming in intoxicated and although he has twelve witnesses in his favor he was found guilty and suffered taboo.

Thomas Davis is a seasoned sinner and seems to take considerable pride in the fact that he was under taboo at the time he was

examined, and had been under taboo 150 times during the two previous years. (188.)

All the testimony in the case respecting these men, when fairly summed up, shows that they came from all parts of the world and have no permanent abiding place; that they take little, if any, interest in the welfare of the community in which they reside; that they have irregular habits and a small sense of personal obligation of responsibility; that many of them are, by reason of defective memories and mental and physical ailments of various kinds, unworthy of much credence, and that it would be a great hardship and injustice not only to the contestees, but to all the other citizens of these election districts, to undertake upon the strength of their statements to overturn the declared results of the election had on November 7, 1893.

Without quoting at large from the testimony of these men, the contestees assert that the evidence entirely fails to establish that they were the only persons in the institution on election day, bearing the names by which they were respectively known; that it does appear affirmatively that many persons of the same name did reside at that time in the institution; and that consequently the identity of the witnesses with those mentioned on the poll-lists as having voted is not shown. If the contestees are correct in this view, it follows that all of this testimony is entitled to no consideration or weight whatsoever.

The contestees further maintain that in the absence of all evidence that votes in the names of any of the citizens in these districts outside of the Harbor were illegally received, and in view of the opposing aspects in respect to truthfulness in which the inmates of the Harbor appear according to the evidence of the contestants, and in further view of their general unreliability, this committee will be entirely justified in rejecting this evidence *in toto* and holding that the correctness of the returns have not been successfully attacked by it.

#### IV.

##### IRREGULARITIES ON ELECTION DAY IN NINTH DISTRICT.

The contestants seek to attack the character of the vote in the ninth election district of Castleton, by the evidence of James Cromwell, who served as a poll clerk in that district on election day. (Pp. 79-91.)

The general unreliability of his testimony may be inferred from his opening statements. (P. 79.)

Q. Please look at the poll-lists I now hand you and state whether they are the poll-lists that were used in that election district on the seventh of November last? A. Yes, sir.

Q. Which is the one you kept? A. This is it, sir. (Witness indicating exhibit "Y.")

Q. Will you look at exhibit "Z," and see what that is? A. That is mine.

Mr. Taylor — Is that in your handwriting? A. Yes, sir.

Q. Is the other one in your handwriting? A. Yes, sir.

Mr. Kiendl — They are both in your handwriting? A. They are both in my handwriting.

Q. Are they duplicates? A. No; except "Z" is not in my handwriting.

Q. In whose handwriting is that? A. I do not know.

This extract is especially interesting and important in view of the repeated statements made by the witness throughout his examination that certain names upon the poll-list kept by him were not in his handwriting. It is evident that from the outset he had not a very clear notion of the characteristics of his own handwriting and that his ability to distinguish between his and that of others was very limited. This is not surprising when we learn that he, like the great majority of the contestants' witnesses, came from the Sailors' Snug Harbor. He had been an inmate of the institution for three years and was necessarily an old and retired seaman who had probably never been accustomed to clerical work of any kind. The duties of a poll clerk were to him onerous and perplexing and it is easy to understand that the list kept by him presented some features which he could not explain.

He freely admits that he was not present at the polling place on election day when the proclamation opening the polls was made (80-106), and that when he did get there he found already present the inspectors of election, ballot clerks and the other poll clerk. He says that no votes had been cast previously to his arrival, so far as he knew (80); but what knowledge he had or could have had upon the subject is left entirely to conjecture. He testifies that there was a number of names upon the poll-list kept by him which had been placed there before he arrived. This does not seem to have suggested to his mind the fact that certain votes had been cast before he appeared. The presence of those names upon the lists simply establishes the fact that votes had been so previously cast. The inspectors of election were not obliged to



await the appearance of a tardy and delinquent poll clerk. Under section 12 of the Election Law, they had the power to designate a person to fill the vacancy caused by his absence, and the designation held good until he appeared. Every presumption, under the circumstances, is in favor of their exercise of this power by the inspectors. Cromwell was the Republican poll clerk, appointed by the Republican party with a view, under the spirit of the law, to the protection of their interests. Had there been any fraud or suggestion of fraud in connection with the names that he found on the poll-list when he arrived, is it reasonable to assume that he would have lent his aid to it by taking numbers from the ballot clerks and placing them opposite the names? Would he not have protested and objected and demanded explanations? All the probabilities of the case are strongly against the contention of the contestants that fraudulent votes were thus cast. It may be admitted that ballots with numbers out of the regular and proper sequence were used, but to arbitrarily infer fraud from such an irregularity would be unreasonable and unjust, and would practically place the elective franchise at the mercy of careless officials.

The contestants carefully refrained from calling any witnesses who were in a position to shed light upon the occurrence at this polling place prior to the arrival of the witness Cromwell. He says that two of the inspectors of election, viz., Hewitt and Love, were in the Harbor at the time he was testifying (80), and the testimony of Bunker, the other poll clerk, before the Assembly committee, was excluded upon the ground that the contestants had not shown that proper efforts had been made to secure his personal attendance. (Pp. 131, 144.)

It is maintained by the contestees that the burden of establishing fraud in this matter was with the contestants, that Cromwell's testimony at the most shows simply an irregularity in the selection of ballots, and that the failure of the contestants to call the two inspectors and the poll clerk above mentioned, raises the presumption that fraud could not have been shown by the testimony of the only persons who were in a position to speak affirmatively.

## V.

### MINOR IRREGULARITIES.

The contestees assume that the committee will familiarize themselves with all the evidence introduced during this contest, and do not propose devoting much time to the consideration of many minor points presented by it, which do not in any way affect the accuracy

and validity of the returns made by the election officers in the districts affected.

The exclusion of De Morgan, for instance, from the polling place of the ninth district may have been irregular and improper, but it is idle to say that a single vote in the district would be affected one way or the other by that circumstance. De Morgan is alleged to have been appointed a watcher by the Republican committee of the county, but the certificate of his appointment is not in evidence. It may have been regular or irregular, and the inspectors of election may have been right or wrong in excluding him. In the absence of the certificate, and proof as to its regularity and genuineness, these are questions which cannot be determined by this committee. It is clear, however, that De Morgan did not arrive at the polling place until the close of the polls (103), and until the vote of the district had been cast, and that the Republican party had had another watcher there named Dennis, during the day. It would be doing violence to the whole situation, therefore, to arbitrarily say that the act of the inspectors in excluding him from the polling place afforded even plausible grounds for assuming fraud either in connection with the vote or returns.

The difficulties that Mr. Philips experienced in attempting to serve an order at five o'clock on election day, on the inspectors of election in the fifth district of Castleton (263), afford no ground for questioning the accuracy of the declared results of the election. The order itself does not seem to be in evidence, and there is nothing to show to whom it was directed or what it required. It may have had absolutely no relation to election matters of any kind.

## VI.

### THE CORRECTION OF RETURNS.

As has been repeatedly said, there can be no presumption of fraud in connection with the acts of public officers any more than there can be in connection with those of private individuals. "Fraud is not to be presumed." This principle is applied even more strongly in favor of public officers where their acts are done under the sanction of their official oaths. Nothing but the most credible, positive and unequivocal testimony should be permitted to destroy the credit and effect of their official acts and returns.

The facts developed in the contestants' case are entirely consistent with the innocence of those in charge of the elections. Even if the committee ignores all questions of credibility and accepts as true the statements of the twenty-five inmates of Sailors' Snug Har-

bor that they did not vote, although recorded on the poll-lists as having voted, there is nothing in their evidence that justifies the inference of fraud on the part of officials. It may well be that unscrupulous "workers" personated the individuals in question and voted on their names.

The fact that the inmates of the institution are nearly all citizens; that their names may properly and legally be on the registry lists without their knowledge; that they have but a limited acquaintance with one another; that they are careless and indifferent about exercising their right to vote, and that there are workers within the walls of the institution itself, makes the field a favorable one for impersonations of this kind.

Assuming that say twenty-five votes, or any number of which can be definitely ascertained from the evidence, were thus regularly cast in any one or two districts, under circumstances consistent with innocence on the part of the officials, does it follow that the presumptions arising upon the returns are overcome, that the votes of the districts should all be thrown out and that the great body of citizens should thus be disfranchised?

It is maintained by the contestees that the reception of a comparatively small number of illegal votes in a district, without any satisfactory proof of fraud upon the part of the officials, should not be considered sufficient to overcome the force and legal effect of the return, although they admit that it should lead to the correction of that return.

In the present contest, if the committee are of the opinion that the evidence does establish that a definite and easily ascertainable number of votes were wrongfully cast in any of the districts in question, by reason of the irregular practices of third parties, then the contestees insist that true and substantial justice will be done and the rights of all parties preserved by the deduction of the votes thus cast, in due proportion, from the total number of votes cast for the respective candidates, or from the total vote cast for the contestees respectively.

**DOCUMENT NO. 47.****IN COMMITTEE ON PRIVILEGE AND ELECTIONS OF  
THE CONSTITUTIONAL CONVENTION.****CONTESTANTS' POINTS — SECOND SENATE DISTRICT.**

In the Matter of the Contest of William H. Davis, Luther W. Emerson, Henry J. Brown, George W. Tompkins and Christian F. Gull, Contestants,

against

M. L. Towns, William H. Cochran, John G. Schumaker, John B. Meyenborg and Almet F. Jenks, Contestees, for the office of District Delegates for the Second Senatorial District of the State of New York to the Constitutional Convention.

The contestants in this case allege that in various election districts of the Second Senatorial District, there were frauds of such a character and extent, and participated in by both election officers and electors, as to practically nullify the Ballot Reform Law if they are permitted to stand, and to render it impossible to ascertain the number of votes legally cast. The authorities uniformly agree that the remedy for such a situation is to reject the entire poll of the district and let the parties show by other satisfactory proof the votes cast for them.

There are in the Second Senatorial District one hundred and thirty-six election districts. The proof shows that in upwards of twenty of these districts the grossest disregard of the essential requirements of the Ballot Reform Law characterized the election.

In the report of the committee of the Senate in the matter of the Quinn contest, these practices are characterized as "gross violations of the law of election day, both by election officers and voters."

And again: "The contestant furnished the best evidence of the most shameless disregard of the laws regarding the secrecy of the ballot in many districts."

And the committee of the Assembly, reporting upon the contest of Mr. Kneeland upon the same practices say: "We do find and report that grave frauds and irregularities dominated and controlled several election districts in the Ninth and Tenth Wards."

And again they say, speaking of persons who obtained the presence of a third party in the booth by fraudulently taking the benefit of the

disability clause in the Election Law: "Nearly all of these persons claimed blindness or defective eyesight, and none of them were, in fact, blind."

And again: "This was done during the entire day, and it is impossible to state how many votes should be cast out as having been fraudulently inspected by third parties in that district." "It appears, further, that electioneering was carried on within the polling place continually, that pasters were given inside the polling place by the Democratic captain of the district to voters during the entire day, notwithstanding protest on the part of the Republicans."

"There seems to have been an utter and entire disregard of the requirements of the statute in this district, and we find and state our opinion to be that the ends of justice can only be met by throwing out the entire vote of the district, it being impossible to state the specific number of fraudulent votes cast therein."

And again: "We find that the entire machinery of the district and the conduct of the election was corrupt and illegal."

And again: "We are of opinion and do find that every vote cast which is not a secret ballot, unless the voter was either absolutely disabled or totally blind, is a fraudulent vote and cannot be counted for either party; that the extent to which such votes were cast in this district cannot be computed, and that the entire vote of the district should be thrown out."

And again: "Your committee find and state that in their opinion a conspiracy was entered into at the election by the Democratic leaders in the Ninth and Eleventh Wards. That a part of this conspiracy consisted in false registration, in the procuring of assistance in the preparation of ballots for voters for the purpose of ascertaining that the vote was cast for the Democratic ticket, in the repeating of votes by the same voter, and in securing persons to vote in the names of absentees." (See Sen. Doc. No. 46, Session of 1894, and Assem. Doc. No. 64, same session.)

Such is the characterization of the practices which marked the election of the sitting members (by two different committees of the Legislature), and those committees threw out about 1,600 votes because of the frauds and crimes thus found. Yet, it is this situation that the sitting members, acting as their own counsel, affect to make light of, and to think should be laughed away.

A violation by electors or officers of a mandatory requirement of law, which materially affects the result, is, even in the absence of fraud, a sufficient ground for rejecting the entire poll. (Paine on Elections, p. 418, sec. 497.)

To permit a neglect of all the requirements of the statute, and still sustain the proceedings, is to forego the lessons of experience and invite a disregard of those provisions which have been found conducive to the purity of the ballot-box.

Honest voters may lose their votes through the misconduct of the officers of elections.

It is well settled that when the proceedings are so tarnished by fraudulent, or negligent, or improper conduct on the part of the officers that the result of the election is rendered unreliable, the entire returns will be rejected, and the parties left to make such proof as they may of the votes legally cast for them. (Id., p. 499.)

Entire polls have been excluded because many citizens were deterred by force from voting; also, because the election officers fraudulently disobeyed the law by allowing unassessed persons to vote, by receiving large numbers of fraudulent votes, by disregarding challenges, by receiving challenged votes without proof, or by disregarding their duties generally. (Id., sec. 500.)

Many irregularities of frequent occurrence involving the performance or omission of acts touching the essential validity of the election, and committed in violation of mandatory portions of the statute, are sufficient to demand the rejection of the entire poll. (Id., sec. 502.)

The rule is well settled that the whole vote of a precinct should not be thrown out on account of illegal votes, if it be practicable to ascertain the number of the illegal votes, and the candidates for whom they were cast, in order to reject them, and leave the legal votes to be counted. (Id., sec. 510.)

And, conversely:

The rule is well settled that the whole vote of a precinct should be thrown out, if it be not practicable to ascertain the number of illegal votes, and the candidate for whom they were cast, in order to reject them and leave the legal votes to be counted.

The true rule is (sec. 513), if the misconduct has the effect to destroy the integrity of the returns, and avoid the *prima facie* character, which they ought to bear, such returns will be rejected and other proof demanded of each vote relied on. And this is the rule concerning such misconduct, whether it be shown to have been fraudulent, that is to say, prompted by a corrupt purpose, or whether it arise from a reckless disregard of the law, or from ignorance of its requirements. In either case the effect is to destroy the integrity of the returns. (McCrary on Elections, p. 362, sec. 540.)

In *Judkins v. Hill* (50 N. H., 140), it appeared that there were declared as cast at one of the precincts, twenty-seven more votes for county commissioner than were marked on the check list. The

court said: "If from the fact of this discrepancy the court ought to find that it was the result of fraud in the managers of the election, the court would hesitate long to count any of the votes cast at an election so tainted, on the ground that with such proof of fraudulent and corrupt purposes, no confidence could be entertained in coming to any reliable conclusion as to what votes were actually given," and the safe rule is that where an election board are found to have wilfully and deliberately committed a fraud, even though it affect a number of votes too small to challenge the result, it is sufficient to destroy all confidence in their official acts, and to put the party claiming anything under the election conducted by them, to the proof of their votes by evidence other than the return.

In *Littlefield v. Green* (Brightley's Election Cases, 493), the court found that there was no proof upon which the court could purge the return, and separate the good votes from the bad, and, therefore, the whole poll was necessarily thrown out. (*McCrary on Elections*, sec. 548; *Knowles v. Yeates*, 31 Cal., 82.)

It is beyond doubt that there are causes for which it is the duty of the court to reject entire districts. (*Brightley's Election Cases*, 502; citing *Fry v. Booth*, 19 Ohio St. R., 27.)

The line is drawn with sharp distinctness between a mere irregularity, which is an inadvertent omission to observe a provision of the statute which is directory merely, or a matter of substance in the statutory requirement. In the former case it does not vitiate the returns, but in the latter it is uniformly held, that if the practice is extensive and indefinite, it vitiates the entire poll.

In *Chadwick v. Melvin* (*Brightley's Election Cases*, pp. 251-256), the court says: "That a whole election district may be stricken out, as showing an entire disregard of conformity to law in holding it, either by design or ignorance, is now well settled, citing cases.

In that case the things complained of were that the election was not held in exactly the place designated, and the polls were not opened until at an hour later than the time designated.

"The term 'election' implies a choice by an electoral body, at a time, and substantially in the manner, and with the safeguard provided by law." (*Foster v. Scarff*, 15 Ohio St. R., 532.)

In this case the sheriff neglected to give notice to the electors of a vacancy in a particular office which was to be filled at an election, in consequence whereof the great body of electors had no notice of the vacancy, and only a small number cast their votes for a single candidate. The whole number of votes cast in the county at that election was 4,339, and 913, or less than one-quarter were cast for the claimant. There was no question of the proper

casting of these votes, but the court set aside the entire returns as to that candidate, and on appeal the decision was upheld.

The court says: "The act of choice must be made, the election must be conducted as prescribed by law, and under the safeguards which the law affords; without the existence of these, however unmistakable the fact of choice, there is no election in law; the act of election derives all its force and validity from its substantial conformity to the Constitution and the laws."

The question might well be suggested to this committee whether there was not such an apparent fraudulent and prevalent purpose extant in these districts as to nullify the statute; that there was, in effect, no election.

The Senate and Assembly committees adopted the well-established rule of law in dealing with such a condition of things.

The Senate committee expressed the law in the following language:

While illegal votes have been cast, the true rule is to purge the poll by first proving of whom they were cast, and thus ascertain the real vote; but if this cannot be done, then to exclude the poll altogether.

Under the present election law, known as the General Election Law of 1892, secrecy of the ballot is an essential feature, and if an elector attempts to exercise his right to vote in such a way as to reveal the contents of his ballot or to make the subsequent identification possible, his vote should not be counted. (*Nichols v. Board of County Canvassers*, 129 N. Y., 395.)

The Assembly committee expressed the rule in the following language:

We are of opinion, and do find, that every vote cast, which is not a secret ballot, unless the voter was either absolutely disabled or totally blind, is a fraudulent vote and should not be counted for either party, and that the entire vote of the district should be thrown out when the extent to which such votes were cast cannot be computed.

The Convention committee has announced and followed the same rule, and no other could be adopted, under all the authorities.

"When the result at a poll, as shown by the returns, is false and fraudulent, and it is impossible to ascertain the actual legal vote from the other evidence in the case, the vote of such poll must be wholly rejected."

"Where illegal votes have been cast, the true rule is to purge the poll-list by first proving for whom they were cast and thus ascertain the real vote; but if this cannot be done, then to exclude the poll



altogether. This is safer than the rule which arbitrarily apports the fraud among the parties. (Paine on Elections, secs. 499 and 513, and citations.)

"When the result in any precinct has been shown to be so tainted with fraud that the truth cannot be deducible therefrom, then it should never be permitted to form a part of the canvass. The precedents, as well as the evident requirements of truth, not only sanction, but call for the rejection of the entire poll when stamped with the characteristics here shown." (McCrary on Elections, sec. 534, citing many cases.)

"Fraud in the conduct of an election may be committed by one or more of the officers thereof, or by other persons. If committed by persons not officers, it may be either with or without the knowledge or connivance of such officers."

A fraud committed by officers or with their knowledge and connivance is ordinarily fatal to the return. (McCrary on Elections, p. 361, sec. 539.)

"It is not necessary, in order to set aside a return for fraud, that it be shown that the officers of election participated in the fraud." (McCrary on Elections, p. 364, sec. 543.)

The Convention is the sole judge of the election, returns and qualification of its members. "It has absolute jurisdiction of the whole subject." (Ch. 8, Laws 1893; *Peo. ex rel. Sherwood*, 129 N. Y., 372.)

The burden is upon the defendants to show their right to the seats they hold, and, failing that, judgment must go against them. (*People ex rel. Judson*, 55 N. Y., opin., p. 529; citing many cases.)

The court says: "The people here are the ultimate source of the right to hold a public office; and now, as heretofore, when the right of a person exercising an office is challenged in a direct proceeding, the defendant must establish his title, or judgment will be rendered against him."

And again: "The defendant's title was established in the first instance by the production of the return. If the return was rejected, then the defendant was bound to establish his title by other proof, and, unless he did so, the people were entitled to judgment against him."

"The plaintiffs were not required, in order to defeat the defendant's title, to go further in the first instance with the proof of the fraud than to overcome the force of the return, and cast the burden upon the defendant of showing by other proof that he received a majority of the votes cast at the election. In election cases, if the return is discredited, so that it is no longer evidence of the

right of the party claiming under it, then the question who received the majority of the votes is to be ascertained by other legal proof."

"The certificate of the proper officers is *prima facie* evidence of election to a public office, but the certificate of the returns upon which it is based are open to inquiry, and the returns will be corrected or set aside as may be necessary to permit the ends of justice, and the inquiry as to errors in the returns is not confined to intentional frauds on the part of the inspectors or election officers. They may be impeached and set aside for error, whether that of the officer, or arising from the interference or illegal acts of third persons." (People ex rel. Judson v. Thatcher, 55 N. Y., 525.)

"Where a return is proved to be uncertain and unreliable and justice requires its rejection, each claimant can only be allowed such votes as the other evidence in the case shows that he received." (Id.)

In this case, the return being rejected, the parties were remitted to other proof to ascertain the result of the election in the disputed district.

And again: "The certificate of the board of canvassers may be conclusive of the election of an officer in a controversy arising collaterally or between the party holding it and the stranger but between the people and a party in an action to impeach it it is only *prima facie* evidence of the right." (People v. Cook, 8 N. Y., 67; 27 N. Y., p. 55; People v. Vail, 20 Wend., 12.)

In the last case, Bronson, J., says that the inquiry "reaches beyond those evidences of title which are conclusive for any other purpose, and inquires into and ascertains the abstract question of right."

"The election return or certificate is not a conclusive proof of the right of the person to an office; it is the subject of inquiry and of disproof; it is only *prima facie* evidence, and may be impeached and set aside for errors and frauds." (119 N. Y., 187, citing People v. Thatcher, 55 N. Y., 525.)

The committee, therefore, has power under its absolute jurisdiction as sole judge of the election, etc., of its members to go behind the certificate of the canvassers and the ballot-box both to ascertain the intention of voters in depositing their votes and to correct errors made, and frauds committed by them.

The right to vote is not a natural right. It is a privilege conferred upon the citizen by the State. And it, therefore, necessarily follows that the terms upon which it shall be exercised, the circumstances attending its exercise, the methods under and by which it shall be exercised, may be prescribed by the Legislature, and the due observance of these requirements be made absolutely

the test of the legality of the votes cast in the exercise of the privilege. The State may say who shall have the privilege, whether it shall be men or women, or both; whether it shall be done by ballot, and, if so, by what particular kind of a ballot; whether it shall be done in a room, and what shall be the particular arrangement of the room. And so as to all other requirements or accompaniments which the State may deem wise and proper as provisions regulating and protecting the exercise of the privilege; and the right to pass upon the question as to whether certain ballots, even though the purpose of the voter may be plainly declared thereby, shall be counted or not for having complied with, or violated the substantial requirements prescribed by the State to be observed by the citizen in the exercise of the privilege, must always be reserved by the State to be exercised by its tribunal duly authorized.

Mr. Cooley, than whom there is no more eminent legal authority, writes thus upon this subject:

“Participation in the election franchise is a privilege rather than a right, and is granted or denied on grounds of general policy.” (Cooley on Constitutional Limitations, p. 752.)

“While it is true that the Legislature cannot add to the constitutional qualifications of electors, it must nevertheless devolve upon that body to establish such regulations as will enable all persons entitled to the privilege to exercise it freely and securely, and exclude all who are not entitled from improper participation therein. For this purpose the times of holding elections, the manner of conducting them, and of ascertaining the result, are prescribed, and heavy penalties are imposed on those who shall vote illegally, or instigate others to do so, or who shall attempt to preclude a fair election or falsify the result.” (Id., 756.)

“In order to secure as perfectly as possible the benefits anticipated from this system, statutes have been provided which prohibit ballots being received or counted, unless the same are written upon white paper, without any marks or figures thereon intended to distinguish one ballot from another.

“These statutes are simply declaratory of a constitutional principle that inheres in the system of voting by ballot, and which ought to be inviolable whether declared or not. In the absence of such a statute all devices by which party managers are enabled to distinguish ballots in the hand of the voter, and thus determine whether he is voting for or against them, are opposed to the spirit of the Constitution, inasmuch as they tend to defeat the design for which voting by ballot is established, and though they may not

render an election void, they are exceedingly reprehensible and ought to be discountenanced by all good citizens." (Id., 761.)

And our own Court of Appeals declares with its own clearness and certainty the same doctrine.

"The right to vote is a privilege conferred upon citizens by law, and must, therefore, be exercised in the manner and subject to the regulations prescribed by the Legislature, as to the time when, and method by which, the public will is to be expressed, and in order that the will and intention of voters shall be made effectual, the substantial requirements of the law must be complied with." (People ex rel. Nichols v. Board Canvassers, 129 N. Y., 395-401.)

This is true of the individual voter, and equally true of that particular aggregation of voters constituting an election district. The election district, with its particular and separate election officers, and its own possession, by each, of all the machinery of an election, becomes one of the units in determining the general result, and where the conduct of the officers appointed to preside over and direct and secure the observance of the substantial requirements of the law in their particular district, is directed to the evasion and disregard of those requirements, and the subversion and nullifying of the law, or where the conduct of the voters generally is directed to, and accomplishes the same end (which certainly could not be so extensively and systematically done as the proof shows was accomplished in the Second Senatorial District, without the co-operation of the inspectors and other election officers), the only remedy open is to reject the entire poll.

The principle that the entire poll should be rejected where the fraud has been so extensively practiced as to fairly permeate the entire proceeding, is too well established to be now disturbed or disregarded; and, as has already been said, it has been recognized and followed, or sought to be, by every committee which has had these Kings county frauds before them, including this present committee of the Convention. For the committee to refuse to apply it now, in the case in hand, is for it to say that there may be a case, and that this is such a one, where the frauds practiced are enough to call loudly for the most unqualified and emphatic condemnation, because of their plain effect of making the statute nugatory, and yet not enough for that condemnation to take a definite form, and have an operative effect. That this election, for its frauds, is exposed to such condemnation is beyond question. The committee must either so condemn or condone.

This committee, therefore, sits first to find the fact. It is in this respect as a jury, and may receive any evidence which will lead to a

conclusion as to the fact, and may then, in its judicial power, give sanction to that conclusion by its judgment.

The following is the evidence concisely stated, of the first six witnesses sworn, taken in their order:

Frank T. Reeve testified that he was poll clerk in the sixteenth district of the Ninth Ward. That where challenges were made a general oath was given in almost every instance; the preliminary oath was not given. That there were many voters in that district who were assisted by a third party going into the booth with the voter. They took an oath that they could not see. That these persons in fact were not blind, and he so states "from the fact that they would take a paper that was offered to them just as you or I would."

That there was a police officer there by the name of McManus, who, at different periods during the day, and almost continuously, would hold the door of the booth open and hold a lighted candle inside of the booth, saying that it was dark and the voter couldn't see, but that on more than one occasion witness saw him conversing with the voter. That objections were made to these practices, but they went on almost unheeded.

That toward the latter part of the day witness saw pasters given out inside the voting place, by being handed over the rail; that canvassing was carried on within the 150-foot limit.

That one of the Republican watchers was ejected from the polling place on one or more occasions immediately after giving a challenge.

Edwin J. Chapman testified that he was a watcher in the sixteenth district of the Ninth Ward. That the policeman there continually entered booths, and that witness remonstrated and told him that he had no right to enter the booths while voters were there. Shortly after that, a man who gave his name as Tunney, entered, and, in reply to the question, said he "had his eyesight, and thank God for it." Immediately after he was requested to say he was blind, and he said, "I am blind," and some one thereupon went with him into the booth, and witness challenged him, but was thereupon immediately "hustled out of the polling place."

Q. Was it a fact, that generally when you interposed a challenge, you were threatened or ejected? A. I was either threatened or forcibly ejected; most of the time I was ejected.

Witness then states that the police officer, in the early morning, made a practice of pulling the door of the booth ajar, and partly entering, and each time he did it witness objected. That several times he saw him receive a paster from some one outside

the rail and take it in one hand. The witness then adds: "That hand would usually disappear behind the door; always when he opened the door of the booth there was a voter inside." This was carried on all day, but witness is not able to say how many times. The persons assisted in the booths were not in fact blind; pasters were peddled within the polling place, and immediately around the polling place; canvassing was generally practiced throughout the day within the 150-foot limit.

Stillman F. Kneeland testified that he was a Republican candidate for Member of Assembly in the Seventh Assembly District; that he was counted out in the canvass in the district by sixty-eight votes; but was declared elected under the legislative inquiry by 608 votes. That the Seventh Assembly District lies partly in the Second Senatorial District the fifteenth election district being included in both Assembly and Senate districts. That nearly every regulation that the law lays down with regard to elections was abused in that district, entirely disregarded. That it was the practice throughout the day for persons who manifestly were not blind to claim that they were blind, and thus to obtain the presence of an outside party in the booth; that he followed some of them, and remembers an instance of one who bought a newspaper after leaving the booth and went off reading it; another, who, after passing out, accosted a friend by saying, "Hallo, Henry, how are you?" the alleged blind man speaking first.

A. I. Peace testified that he was an inspector in the fourteenth district of the Ninth Ward. That there was a large number of men at that polling place who claimed assistance on the ground of physical disability — that they "couldn't see." One or two simply said that they "couldn't fold their ballots." That these persons were accompanied into the booths by an outside party, and that that practice was carried on generally throughout the day, and characterized the election that day; that these persons were not in fact blind.

James H. Moore testified that he was a canvasser in the third district of the Ninth Ward, and was captain of the district, and was at the polls all day. That there were many voters who were assisted by third parties accompanying them into the booths. That in one specific case, which the witness remembered, the man had glasses on and his head bandaged when he presented himself at the polling place, but that the day previous, and the day after election, witness saw him walking around without either glasses or bandage. That the practice of thus obtaining the presence of a third party in the booth was carried on at intervals all day, and witness adds: "I think one out of the lot was blind; I could safely say two."

John G. Rollins testified that he was a watcher in the twelfth district of the Ninth Ward; that electioneering was carried on generally within the 150-foot limit; that voters were constantly accompanied into the booths by outside parties; that witness objected to it, and that one, Judge Murphy, thereupon caused a good deal of excitement. He got inside of the polling district and said he didn't care a damn for anybody, the polling clerk, the inspectors, or anybody else; that he was running that place for the Democratic party. That the particular occasion of his objection then was on account of a man who claimed to be paralyzed, but who was not paralyzed, but who, nevertheless, was accompanied into the booth by a third party. Witness adds that he raised no more objections after that.

"Q. Why not? A. Because I was intimidated by being pulled from behind, and fists being thrust in my face."

Witness was unable to say how many were assisted by others accompanying them into the booths, but that it was carried on generally throughout the day.

Witness further testified that he was not allowed to take his proper place inside the polling place, but was prevented by a man named Callahan, who said the watchers could not come inside. Witness then referred him to the clause on the back of the watcher's certificate which said that the watchers could go inside, and then this interesting cross-examination followed:

Q. Then what did you do? A. I waited for an answer.

Q. How long did you wait? A. Not very long.

Q. How long? A. A minute or two.

Q. Then what did you do? A. I stayed outside the poll.

Q. What did you do besides? A. I watched the performance.

As to the man who claimed that he was paralyzed, witness says he was not, because he walked along in front of the witness. Witness saw him standing as other men stand, and when he came out of the booth he saw him rubbing his hands. These certainly are sufficient grounds, with what may be apparent besides in the manner and conduct of the individual, to warrant any man in saying that such a subject was not paralyzed.

Counsel on the argument called attention to the testimony of witness George Johnson (p. 56), as to the number of times the practice of breaking down the secrecy of the booth was indulged in, when the witness refused to swear to any definite number more than three. The reason of such refusal the witness himself makes plain, and it is the same which operates upon the mind of any witness. The following is the testimony of this witness on this point:

"The inspector would say, 'Do you swear your eyes are poor?' and he would say, 'yes,' and a man would go right into the booth with him, the inspector having full knowledge that the men were not blind."

On cross-examination the witness swears somebody would say, "Heigh, Jimmy! your eyesight is poor; come out here," and the inspector would say, "I want this man to go with him." He would say, "Are your eyes poor?" "Yes, sir."

Q. Please tell how many times you will swear to it? A. I could not swear to it any certain number of times.

Q. Will you swear it was twice? A. Yes, sir.

Q. Three times? A. Yes, sir.

Q. Four times? A. Well, if I kept on like that, no; I would not swear it was four times.

Q. You won't swear to four times, will you? A. Well, in my opinion, it was over four times, but I will not swear to it.

It is, therefore, evident that the witness was simply refusing to be forced to swear to any particular number. And the same is true of the other witnesses similarly situated. And the witness, William M. Winans, testifying to the same district, says: "There were a great many persons who thus claimed physical disability, but they merely swore their eyesight was poor. That continued all day to my personal knowledge, and I watched them closely. I mean to say that these men were not blind."

It was intimated, upon the argument, that these illustrations were selected as being particularly strong, and were not fair examples of the testimony. Such emphatically is not the case. They are, in fact, the first six witnesses sworn upon this subject, taken in their order, but I add here, in view of that insinuation, the testimony of a few witnesses, being the first ones sworn, taken in their order, upon the afternoon session, June 18, 1894.

The first witness, Jackson, did not speak upon this general subject. I, therefore, begin with the second.

Theodore H. Bunker, testifying with reference to the thirteenth district of the Ninth Ward, says: "That he was a ballot clerk, and at the polls all day; that this practice of a party worker accompanying a voter into the booth was carried on pretty much all day; that some claimed they were blind, and some merely said, 'I am disabled;' some said they were paralyzed. That these men thus securing the presence of a third party in the booths were neither blind nor paralyzed." The witness says "they were no more paralyzed than I am" (p. 4). and "they were no more blind than I am."



Q. Did you know them personally? A. I know them by sight.

Q. You know that they are not blind? A. I know that they are not blind. They can make their way along the street as well as I can.

The witness, William H. Davis, testifying with reference to the practice in the eighth district of the Ninth Ward, says as to whether or not there were various voters thus assisted that day, that "there were a great many of them all through the whole day; they claimed that they were blind, or that their eyesight was poor; or that they couldn't use their arm, or were paralyzed," and outside parties — political workers — thereupon accompanied them into the booths. That these individuals were not blind, and as to those claiming they were paralyzed, witness says: "I know they were not paralyzed; I have seen some of these individuals a great many years before and the general fact is as to them, that they never were blind, and never have been blind since." A part of this testimony was in response to the cross-examination.

In response to a question put by the chairman with reference to a particular voter:

"Q. Did the voter take his oath that he was physically disabled? A. He did not take any oath of physical disability at all; he took his oath that he couldn't fold his ticket; he didn't swear to any disability."

I now turn to the testimony of the last three witnesses upon that session.

Charles Kleinfelder, testifying with reference to the tenth district of the Ninth Ward, swears that he was a poll clerk in that district, and that voters were accompanied into the booths by third parties by stating "that they were disabled and couldn't fold their tickets," and that some stated that they were "near-sighted."

Q. What was done when this claim was made? A. There was a challenge offered by the inspector, and the watchers and inspectors on the other side threatened to knock some of the faces in.

Q. What was done about the voting, if he took the oath; state that? A. There were men who went in there and folded their ballots for them; went into the booths. There were cases where the voters didn't swear, but were accompanied into the booth.

Q. What do you say as to whether these men were in fact blind or not? A. I don't think they were, or near-sighted.

Mr. Shanks — I move to strike out that answer.

Q. Were they blind? A. I don't think they were; I don't remember a blind man coming to vote.

Mr. Shanks — I object to the answer.

Q. Can you state who it was that assisted that man in the booth?

A. Yes.

Q. State his name? A. One was a man by the name of Hill, a Democrat.

Q. Did he assist more than one? A. I think he did; I think he assisted quite a number during the day.

Speaking with reference to a particular voter by the name of McLoughlin, who was particularly called to witness's attention, question was asked:

Q. Do you know whether he was assisted at the booths? A. He was, and I think by this man Hill.

Q. Can you state whether he asked Mr. Hill to go into the booth with him or not? A. No; there didn't seem to be any question asked about anything of that kind; they seemed to be all ready to go in.

The Chairman — State what was done? A. There seemed to be men ready to go right in and do it.

By Mr. Mallory:

Q. Was there always a man ready to go into the booth with them? A. There was, always; that was practiced throughout the day.

This witness also adds that electioneering — handing out pasters — was carried on right inside the room throughout the day, and he also specifies one case where the ballots were folded for the voter by an outside party without their going into a booth at all.

Upon the cross-examination this witness says:

Q. In the case of these disabled and blind men? A. I didn't see any blind men there.

Q. Or near-sighted; they all took the oath of disability, did they not? A. There were some voted without taking the oath.

Jacob Hoffman, testifying with reference to the twenty-first district of the Twelfth Ward, testifies that he was a ballot clerk and at the polls all day, except a few minutes when he went to lunch, about noon. This witness swears that there were a great many who were accompanied into the booth by some party worker because they claimed their sight was defective, and that this occurred throughout the day. The witness swears that these persons were in fact not blind, and he adds: "I don't think they had any defective eyesight." Upon the cross-examination, by Mr. Towns, the witness swears, of course, that he does not know how these men voted.

Lewis Gailbach, testifying with reference to the same district, says that he was there all day, excepting about thirty minutes; that there were many voters who claimed they couldn't see and were thereupon accompanied by others into the booths; that this was carried on "the greater part of the day."

Q. Are you able to state how many? A. There were numerous cases, but I can't state how many. And this witness says from his personal acquaintance with these men that they were not blind. Upon the cross-examination he states that he does not know for whom they voted.

Thus, there is here presented for the purposes of this brief, a fair example of the testimony taken, absolutely without any attempt whatever at selection, but in their order as they happened to come at the beginning and at the end of sessions.

It is idle to pretend that the inspectors in these various districts discharged their duty when they allowed the substantial and essential requirements of the law to be repeatedly ignored and violated. A vigorous remonstrance and declaration from them that it must be stopped would have ended it.

And some of them have since been indicted for their neglect, or worse, of duty at this election.

The court in the Nichols case says (opinion, p. 417):

"No effort appears to have been made by the inspectors to correct this palpable violation of law, although within the limits of a small town it could apparently have been accomplished in a comparatively short period of time, by an exchange with the districts whose ballots had also been erroneously distributed. But the election was deliberately proceeded with, and the ballots cast in all of the towns and districts named were taken under circumstances which obviously exposed the political character" of certain votes.

The court, in the case of *People v. Cook* (8 N. Y., 67), holds that there may be departures from the statutory requirements permitted by the inspectors which will put in hazard the whole vote of the district, and that such a case would arise if the irregularity deprives the legal voter of his right, or permits a disqualified person to vote, if it casts uncertainty on the legal result, or if it has been occasioned by an agency in the interest of a party seeking to derive a benefit under it. (8 N. Y., opinion at page 93.) The court then proceeds to give an illustration in this language: "Should a gang of rowdies gain possession of the ballot-box during or after the close of the election before the canvass, and destroy the whole or portions of the ballot, or introduce others surreptitiously into the box so as to render it impossible to ascertain the number of genuine

ballots, the whole should be rejected. It would, in this case, be the duty of the inspectors to certify and declare the fact."

The contestants in this case might well have furnished the court with another illustration, and does now furnish it to this committee; for what is the difference between the "introducing ballots surreptitiously into the box so as to render it impossible to ascertain the number of genuine (legal) ballots" by rowdies, or the introduction of illegal ballots into the box by unscrupulous perjurers, assisted by equally unscrupulous party workers, and the permission or assistance of election officers, as has been done in this election?

And the opinion of the people generally, as expressed through their grand jury upon this point, may be gathered from the fact, as I am most credibly informed, that many of these officers have been indicted for these very matters at this election. The same is true of one district in the county of Rensselaer, as witness the following clipping from the New York World of the date of May 17:

*(Special to the World.)*

"Troy, N. Y., May 17.— \* \* \* Other cases before the grand jury to-day were Joseph Laundry and William Rabbitt, accused of perjury in swearing that they were incapacitated from preparing their ballots in the first district of the Thirteenth Ward. Thomas Bohlen and Thomas Kerwick, Democratic inspectors in that district, charged with permitting persons to go into the booths with voters whom the inspectors knew were not physically disabled."

Thus this bold method of defeating the statute is fairly with us, and it depends very largely upon this committee to say whether it shall be discountenanced and condemned, and thus checked, or whether it shall be permitted to stand triumphant and impudent.

"It is of paramount importance under our system of government that elections shall be conducted in a way that shall secure public confidence." (People v. Wilson, 62 N. Y., at page 193.)

"The question whether a voter was or was not entitled to vote is open to examination in proceedings subsequent to the election upon any competent evidence." (People ex rel. Smith v. Pease, 27 N. Y., 45.)

Commenting upon the cast last above cited (Smith v. Pease), the Court of Appeals, in 55 N. Y., at page 530, says "that the doctrine of the case of People v. Pease was radical and comprehensive. Starting with the principle that the election, and not the return, is the foundation of the right to an elective office, it was held that it was competent, in an action to try the title, to go behind the ballot-box and purge the return by proof that votes

were received and counted which were cast by persons not qualified to vote. In that case no fraud or misconduct were imputed to the inspectors. The disputed votes had been received by them in good faith. The right of the person offering them to vote was not challenged at the time, and the return accurately stated the result of the election as shown by the count of the ballots actually deposited according to the forms of law. The case is a strong illustration of the disposition of the courts in this State, in election cases, to look through the formal evidence of the right to the right itself, and to set aside the returns of election officers when necessary to promote the ends of justice. Freedom of inquiry in investigating the title to office tends to secure fairness in the conduct of elections, faithfulness and integrity on the part of returning officers, and it weakens the motive for fraud or violence by diminishing the chances that they may prove successful in effecting the objects for which they are usually employed."

"The Legislature have left to those parties having the power to judge of the return and election of their own members to correct any abuses which may have resulted in such election and to apply such remedies as the nature of the case calls for." (People v. Pease, at page 54.)

It is urged in this case that the act of the inspectors in receiving and depositing the ballots is judicial, and, therefore, cannot be reviewed by this committee. That was the position taken by the defendant in the case of People v. Pease (*supra*). The court disposes of that in the following language: "It is supposed that the contrary has been satisfactorily shown and that the universal practice of the court, in actions or proceedings like the present where they have inquired into the very right of the case, refutes this assumption. This doctrine was promulgated nearly forty years ago in this State, and has, so far as I can ascertain, been acquiesced in and sustained in all cases, and I think it should not be disturbed."

Seldon, J., also writing an opinion in the same case, says: "The position that inspectors of election are judicial officers would prove too much for the plaintiff's case. If they act judicially in receiving votes, they also act judicially in counting them and declaring and certifying the result. If their action is conclusive in one case, it is conclusive in the other; and the plaintiff must rest contented with their reports, which, combined, gave the greatest number of votes to the defendant. Inspectors are required to decide some questions, but they are such as ministerial officers are often required to decide. A county clerk before recording a deed must decide

whether it is legally proved or acknowledged, but his decision is not conclusive. A sheriff must decide whether the person whom he arrests is the person described in his process, but his decision is not judicial and he acts at his peril," with many more illustrations.

It would seem, therefore, that the contestees in this case cannot shut off the inquiry of this committee as to the very right of the matter of the election in the Second Senatorial District, by saying that the inspectors, having administered the proper oath to the voter in some cases, and any other sort of an oath, as they did in others, the whole matter was thereby forever concluded.

The determination of the rights of the sitting members "leads to an investigation into the title of the claimants to the particular office, and such investigation must result into a determination of the legality of the election."

"Ordinarily there would be great difficulty in separating the ballots which are legal and which have no legality. But in the case at bar it is quickly ascertained that five votes given and counted for the relator were cast by persons not qualified to vote. They must, therefore, be subtracted from the total vote allowed him." (*People v. Pease*, 27 N. Y., 54 and 57.)

Who will deny that there were in this case at bar large numbers of votes cast that were rendered illegal by reason of the gross violation of fundamental and essential requirements of the law? And who can or will say that "it is quickly ascertained that five votes," or any specific and ascertained number of votes, were these particular illegal ones?

The court declared in the *Nichols* case (129 N. Y., 395) that the crucial question presented by that situation was what should be done with ballots definitely marked whereby they might be identified, and which thereby became votes illegally cast, although no actual fraudulent purpose was claimed, and the court disposed of the question by declaring them absolutely void, because they violated the statute as to secrecy, and rejected them. In the case before the committee, however, one of the elements which was absent from the *Nichols* case, except by inference, namely, a deliberate intent and scheme to violate the law, is conspicuously present in the case now being heard, while it cannot be denied that the marking or identifying of large numbers of the ballots with ample sufficiency for the purposes of fraud; that untold numbers of ballots in this case were deposited and entered into the canvass, which ballots served even more certainly the purpose of the briber and other manipulators of fraud than if they had been manually marked, is established beyond controversy; and, indeed, conceded, because

no attempt was made to contradict it. The remedy declared to be the proper one in the Nichols case cannot be here applied otherwise than by wholly rejecting the entire vitiated poll, because the ballots cannot now be separated, because of lack of proof as to what particular candidate they were cast for; but their purpose and effect is precisely the same, and the method of accomplishing both, infinitely more dangerous. This committee is, therefore, driven to adopt one of two courses, either to reject the entire vitiated return and leave the parties to make their respective proofs of the actual vote or to allow the crime, so clearly and conclusively proven, to pass unchallenged in this instance, and thus encourage it to be repeated in many others.

The Nichols case (129 N. Y., 395) is so exactly an authority to be considered in this case that I bring it fully to the attention of the committee. The court there says: "The primary object of the 'Ballot Reform Act' (chap. 262, Laws of 1890, amended by chap. 296, Laws of 1891) is to enable the voter to cast his ballot without the possibility of revealing by the act of voting the identity or political complexion of the candidates voted for.

The right to vote, secured to the citizen by the Constitution, must be exercised in the manner and subject to the regulations lawfully prescribed by the Legislature in respect to the time when, and the method by which, his will is expressed, and in order to make his will and intention effectual at the election he must comply with, at least, all the substantial requirements of law.

The general policy and scope of the act was well expressed in the title: "An act to promote the independence of voters at public elections; enforce the secrecy of the ballot, and provide for the printing and distribution of ballots at public expense." We know that the principal mischief which the statute was intended to suppress, was the bribery of voters at elections, which had become an intolerable evil, and this was to be accomplished by so framing the law as to compel the voter to exercise his privilege in absolute secrecy. The primary aim and object was to enable a voter to cast a ballot for the candidates of his choice without the possibility of revealing, by the act of voting, the identity or political complexion of the candidates voted for. When it was made impossible for the briber to know how his needy neighbor voted, the law-makers reasoned that bribery would cease. It is reasonable, therefore, to assume that any construction of this statute which would permit ballots to be cast and counted that would reveal the way the voter using them voted, should be avoided as contrary to the true policy and intent of the law. The

idea at the very foundation of the law was secrecy. To this end it was provided that ballots, uniform in size, in type, in color and quality of paper, and in the words and appearance of the indorsement, should be printed and distributed by the county clerk at the public expense.

So careful was the Legislature in providing for secrecy in voting that it prohibited the voter from in any way marking his ballot or showing it to any one, after it was prepared for voting, in such a way as to reveal its contents, and everyone was prohibited from soliciting the voter to show the same, and no person but an inspector of election is permitted to receive a ballot prepared for voting from a voter. (Sec. 35.) It is, moreover, expressly provided that any election officer or watcher who shall reveal to another person the name of any candidate for whom a person has voted, or who shall communicate to another his opinion, belief or impression, as to how, or for whom, a voter had voted, or shall place a mark upon a ballot, or do any other act by which one ballot can be distinguished from another, shall be guilty of a misdemeanor, punishable by imprisonment. (Sec. 34.) It is also provided that a ballot deposited by a voter in the ballot-box upon which, or upon any paster affixed thereto, a writing or mark of any kind has been placed by the voter, or by any other person to his knowledge, with the intent that such ballot shall afterwards be identified as the one voted by him, shall be void and of no effect. Most of these stringent provisions would be little short of absurd if it can be supposed that ballots, bearing an indorsement which distinguishes them from all others in use at the polls, can be lawfully put into the ballot-box. The indorsement upon the official ballot was an essential part of the machinery of elections, by means of which the secrecy of voting was to be secured and enforced.

The indorsement was, therefore, to be precisely the same on all the ballots used at the same polling place or election district. A different, distinct or peculiar indorsement upon the ballots, or any of them, used by any party or candidate, or set of candidates, would, of course, remove all secrecy from the act of voting, as to the electors using a ballot with such an indorsement, and thus the fundamental purpose of the law would be defeated."

And with even greater force it must be said that if the voter allows a third person to enter the booth with him, and thus not only to see him prepare his ballot, but to actually prepare it for the voter, and watch him while he deposits it, the provision of the statute for the booth is an absurdity. Most emphatically the booth



and seclusion of the voter is an essential part of the machinery of elections, "by means of which the secrecy of voting was to be secured and enforced." (People ex rel. Nichols, 129 N. Y., 395, etc.)

"The ballots in question (in the Nichols case) were cast in utter disregard of this important provision of the statute. In other words, the voters who used them necessarily disclosed to the election officers, watchers and such of the by-standers as could and desired to observe, the candidates voted for, and thus not only the letter of the statute was disregarded, but its very purpose and intent defeated.

"While there is nothing in the record to show that the ballots were intentionally, or by any preconcerted arrangement, diverted from the election district for which they were prepared and sent to districts for which they were not prepared nor intended, it is scarcely possible that the means of distinguishing them from all the other ballots used were not known to the election officers who received, and many of the voters who used them. But, however that may be, the important fact remains that every elector who voted one of the ballots thereby revealed his choice, and the contents, as fully and completely as if the party designation of the political complexion of the candidates whose names appeared upon its face, had been made a part of the indorsement, or was stamped in some other place on the outside of the ballot. If this can be held to be a legal exercise of the right of suffrage, and that the ballots thus cast are on the same footing as all the other ballots, then it is manifest that the Legislature has utterly failed to secure secrecy in voting. The legal consequences that follow this disregard of both the letter and the spirit of the statute have been, as it seems to us, very clearly pointed out by the Legislature. The twenty-ninth section, as amended, provides that "no inspector of election shall deposit in a ballot-box, or permit any other person to deposit in a ballot-box, on election day, any ballot which is not properly indorsed and numbered, except in the cases provided for in section twenty-one of this act; nor shall any inspector of election deposit in a ballot-box, or permit any other person to deposit therein, on election day, any ballot that is torn, or has any other distinguishing mark on the outside thereof."

It will be seen, upon a careful reading of the statute, that the Legislature has carefully provided for the exclusion of marked ballots from the ballot-box, and from the final count and estimate of the actual legal vote in two cases. First, where the mark or writing is affixed or placed upon the face or inside of the ballot,

or upon any paster attached, by the voter or any other person for the purpose and with the intent of subsequently identifying the ballot and tracing it to the voter. Secondly, where there is a distinguishing mark on the outside, open and visible to all, which may not only be used to identify the voter who cast it, but also serves to inform others, at the time of voting, of the contents of the ballot, and thus defeat the object of the law in securing secrecy. In this case the election officers are forbidden to put the ballot into the box, no matter with what intent the distinguishing mark was placed upon it. To allow it to go into the box might defeat the policy of the law, though the distinguishing mark was the result of accident or mistake. The plain words of the statute, therefore, made it the duty of the election officers, when offered one of these ballots, prepared for and indorsed with the designation or number of another district, to refuse it. This would not defeat the right of the elector to vote, because he could still prepare and tender a ballot with the proper indorsement. But the inspectors did receive the ballots and put them into the ballot-box, and the remaining question is whether they could lawfully count ballots found in the box which it was their duty to refuse when offered by the elector. The Legislature has forbidden the elector to cast such a ballot. It has prohibited the inspectors from placing it in the box. The case could be no stronger, had it in terms declared such a ballot absolutely void for all purposes. But it is said that this result will disfranchise the electors who cast these ballots in good faith, believing that they were the proper official ballots. The answer is that when an elector attempts to express his will at an election by the use, through either design or accident, of ballots which the law declares shall not be counted, the courts have no power to help him. Had these ballots been misplaced by design, or some preconcerted arrangement between the county clerk and the candidates whose names appear thereon, or some of them, the voter using them might be as innocent then as they appear to be in the case at bar, but to hold, under such circumstances, that the votes must, nevertheless, be counted would be to suggest an easy method of defeating the fundamental purpose of the statute. The law contemplates that the elector will not blindly rely upon any one, not even the election officers, in the preparation of the ballot. If he is handed an official ballot, with a distinguishing mark upon it, or an improper indorsement, he is not obliged to vote it, but may procure a proper ballot.

" But, even if it could be said that those electors had no knowledge, or means of knowledge, in regard to the improper indorsement, and that they could not, without some inconvenience, provide themselves with ballots such as the law required, we would still be obliged to hold that it would be far better that their votes should be deemed ineffectual than that the fundamental purpose of an important public statute should be subverted, and, in the struggle to save these votes by judicial construction, the door should be thrown open for evasions of the statute, which might revive evils far more dangerous to the public welfare than can possibly, under any circumstances, follow the exclusion of a few hundred votes in a single county, cast by voters who, at least, as all must admit, neglected to observe important requirements of the law. It may be freely admitted that no statute regulating the conduct of elections should be so construed as to place arbitrary or unreasonable obstructions in the way of the citizen in the exercise of his right to vote; and, further, that any law fairly open to such an objection would be in conflict with the Constitution. But when we keep in mind the fact that the statute now under consideration was intended to prevent corruption and the consequent debasement of the franchise, it was not unreasonable to provide that if an elector attempts to exercise his right in such a way as to reveal the contents of his ballot, or to make subsequent identification possible, the inspectors shall not receive it, and, if received, it shall not be counted.

" This case may be a hard case, and, doubtless, is; but the legislative enactment is clear, and, although it may deprive a portion of the citizens of the county of their right to be heard in the election of a clerk at one election, it is better that they should suffer this temporary privation than that the courts should habituate themselves to disregard or ignore the plain law of the land in order to provide for hard cases.

" The Legislature was trying to prevent multitudes from ' being voted,' and being guided by a mere device or mark by which they should distinguish the ballots which they were to use in the process, without a knowledge of the names of persons for whom their ballots were being cast. Elections are a contrivance of government, which prescribes who are electors and how they may express their will, and it is a legitimate exercise of power to prescribe the description of ballot which shall be used, and all other things constituting essentials in the method of voting.

Other cases could be cited which hold the principle that ballots cast by electors, not conforming to the provisions of a statute

intended for the purpose of securing secrecy, and which reveal the contents, or render it capable of subsequent identification are void by force of prohibitions in the statute against receiving and counting them in substance the same as is to be found in the statute under consideration. (*Field v. Osborn*, 21 Atl. Rep., 1070; *In re Vote Marks*, id., 962; *Ledbetter v. Hall*, 62 Mo., 422; *Perkins v. Caraway*, 59 Miss., 222; *State v. Calhoun*, 61 id., 556.)

"We think that these ballots cannot be counted without weakening or breaking down provisions of the statutes, which, in view of the general purpose, must be regarded as vital. For these reasons the order appealed from (directing the rejection of ballots whose contents were or might have been known to persons other than the voter) should be affirmed."

Ruger, C. J., writing in the same case, says:

"I regard this case as one of primary importance, not so much, perhaps, from the effect that its decision may have upon the interest of the individuals engaged in the controversy, or the temporary prospects of political parties, but from the permanent influence which it will exercise upon the cause of ballot reform, which has, in recent years, shown itself so strong in the regard of the people, and vindicated that favor by the success which has attended the enforcement of the reform legislation of 1890 and 1891.

"I think that it will now be generally conceded that the influence of these laws, if fully and impartially enforced, will practically prevent bribery at elections, and restrain the power of extraneous influence over the mind and conduct of the voter in the exercise of his political rights within healthy limits. Any decision, therefore, of this court which would tend to materially hamper the beneficial operation of these laws and relegate the question of ballot reform to its original position, will, I think, prove a serious misfortune to the country, and the source of great regret to every thoughtful and conscientious citizen.

"I think that but few will dissent from these views, or from the further proposition that any determination of the question before us which will prove an embarrassment to the cause of ballot reform should be most earnestly deprecated and avoided.

"The question which lies at the foundation of the controversy is, who had a plurality of the legal ballots cast at the election in question."

And after the rejection of those polls where the result, as declared, is so vitiated by prevailing fraud, that question is left open to the litigation of the parties in interest according to the usual course in such matters. It is merely a shifting of the

burden of proof to the sitting members to show by other sufficient proof, as they may, that notwithstanding such fraudulent practices in certain districts, and the consequent rejection of the polls which they vitiated, they, nevertheless, had a majority, and in this connection there is no other hardship that comes to them but such as is common in legal controversies, and such as was accepted, in the first instance, by the contestants.

"Such is the only explanation (viz., that it was a mistake) offered by the officers implicated to account for the apparent perpetration of a great crime, through which one political party was, in nine election districts of the county, enabled to disregard the wholesome restraints of the ballot-reform law, and reap the advantages to be derived therefrom.

"That these sections have been glaringly violated is made apparent by the conceded facts, and, while the actual offender may not now be certainly pointed out, it will be desired by every candid and law-abiding citizen, that 'the fruits of these frauds shall be denied to those who perpetrated them, or those who reap the benefit of them.'

"The purpose of the act seems to require that these provisions should be held to be mandatory, and that a disregard of them upon any pretense whatever should constitute a violation of the law, and cause a forfeiture of any benefits sought to be derived from such illegal ballots."

"The vigorous enforcement of these penalties constitute the principal mode by which obedience to the law was expected to be secured."

But that principal mode, unhappily, seems to have failed in the case at bar, and the expectation is disappointed. But, fortunately, this committee has still within its power, under well-recognized legal principles, a sufficient and just remedy.

"It is evident that if such practices are permitted under the law, the purpose of the act to shield the voter from obnoxious supervision and observation, while exercising the right of elective franchise, and to effectually shut off opportunities for bribery or other unlawful interference with a voter, is practically defeated."

"This interpolation of a word" (suggested to change the construction) "is deemed to be justified by the alleged injustice which would otherwise be inflicted in this case by the disfranchisement of upwards of 1,200 voters. The conclusive answer to this claim is the fact that the interpolation defeats the plainly-implied intention of the law-makers, and destroys the sole beneficial purpose of the act.

“What was the obvious purpose of this statute? It is expressed in language that permits of no doubt as to its meaning, and is revealed, not only by its title, but breathes in every line and word of its forty-six sections. The title declares it to be “An act to promote the independence of voters at public elections, enforce the secrecy of the ballot, and provide for the printing and distribution of ballots at public expense.” The body of the act shows by manifold provisions that this purpose is to be accomplished only by the inviolability with which the conscience and intention of the voter is guarded while exercising the right of suffrage, from the observation and scrutiny of others. It cannot, therefore, be reasonably claimed that it was within the purpose of the law-makers to permit a voter, whether casting an official or an unofficial ballot, to reveal at the polls in any manner or on any pretense whatever the character of the ballot which he proposes to cast.

“It is reasonable, therefore, to suppose that the Legislature intended its elaborate, carefully-considered scheme of ballot reform to apply to a mere incident of an election, rarely, if ever, liable to occur, and to leave the great evil, which dominated the entire country and infested every polling place throughout the State, to rage without regulation, restriction or control? It would amount to saying that the leading and most effective provision of the statute, containing its only operative clauses, should be emasculated and turned into a provision having no practical effect or operation whatever. A most unjust and mischievous construction would be thus given to the law, for it would apparently authorize the improper indorsement of official ballots, and, although so marked or distinguished as to reveal their contents, would, nevertheless, permit them to be counted.”

The law expressly forbids every voter from revealing to any one in the polling place the name of the candidate for whom he intends to vote, or to show his ballot, after it has been prepared in such manner as to reveal its contents. (Sec. 35, Laws of 1890, amended 1891.) Surely, no language more appropriate and forcible than this could be written, with reference to the case before this committee. Its application is exact, and the principle of rejecting the entire poll, and requiring the parties to make their proof of the true and legal result, fairly invoked.

The court continues:

“But it is urged that a strict construction of the law must result in disfranchisement. This is true, but the law plainly contemplates such a result, and who can complain, except those who are opposed to any restrictions whatsoever upon the action

of an elector? No advocate of the reform ballot law can justly criticise a result which was in the minds of its authors when the law was drafted and enacted. They clearly contemplated this effect, and determined that the injustice which a few might suffer through ignorance, wilful blindness or inattention to the requirements of the law, should not be permitted to defeat the great good to be secured to the whole people by the adoption of an effectual scheme for the purification of elections. Can it then be seriously contended that voters may knowingly refuse obedience to the conditions imposed by the law, and still claim that their votes shall be counted as lawful ballots? Such a result would transform the elaborate scheme adopted as a reform measure into an elaborate farce, calculated only to embarrass and hamper the citizen, without adding a line or word to the statute looking to the disqualification of illegal or fraudulent voters, or the purification of elections. It was an argument strenuously urged against the adoption of the law, that its numerous provisions, complicated, novel and technical, as they were, would necessarily result in the disfranchisement of voters, but the advocates of the law contended that these results were the necessary concomitant of any efficient ballot-reform law, and the Legislature deliberately and intentionally approved the adoption of such restrictions and qualifications. It is now too late to discuss the wisdom or policy of the law.

"It is perfectly evident that by strict compliance with these provisions of the law the contents of a ballot cast by a voter are absolutely secret to all but himself, and thus the object of the statute is readily effected.

"So scrupulously has this law endeavored to preserve absolute secrecy as to the ballot deposited that it provides for the nullification of a ballot which is so marked as to be capable of identification in any way. The reading of sections 25, 34 and 35 exhibit the safeguards established about the depositing of the voters' ballot. All of the provisions of this law, when considered in connection with the purpose, as declared in its title, are indicative of the legislative intent that the independence and freedom of the voter are promoted and are best guarded through the casting of a ballot, absolutely indistinguishable in any of its features from all other ballots. Now, it is perfectly plain, and it is not disputed, that by the variance in the numbering of the polling place in the official indorsement, these ballots in question were distinguishable from those ballots which were prepared for, given out and cast by the supporters of other political parties; and every ballot

deposited marked, or could be identified as a Republican vote. A right construction of the language of the statute calls for a ballot bearing an official indorsement which designates the polling place at which the ballot is to be used, and where that is not so both the object and the provisions of the statute may be violated and the law rendered ineffectual for the accomplishment of its avowed purpose."

How about the actual presence in the booth, with the voters, of the political "worker," almost, if not quite at will, throughout the entire election?

"The ballot-reform law was modeled after what was known generally as the Australian ballot law, and its enactment was a long step forwards in the promotion of the purity of popular elections. The difficulty in this case, if the result of a mistake, as we assume it to have been, was enabled to occur by the requirement of our law, that there shall be as many separate kinds of ballots as there are different political parties represented. Had there been but one ballot required, this occurrence would not have been possible. It may be, and I assume it to be, a hardship that the result might operate to render null so many votes, and to alter what may have been an honest expression of the popular will; but it would be an evil, in comparison with which the hardship complained of is as nothing, if a law, which the people of this State, through their Legislature, so deliberately framed and have solemnly adopted, should be so construed as to render fraudulent evasion possible. In my judgment, unless this law is upheld and given the effect intended for it, and adequately secured by all of its provisions, then technical construction or the ingenuity of minds can impair its efficacy. This is not a case for the court to strain after explanation in order to remedy an apparent hardship, when to do so simply results in emasculating a provision of the law, the existence of which is calculated to exclude all attempts at fraudulent or corrupt practices at the polls. It will not do to break down any of the provisions of this law, framed against a possible corrupt vote, lest in so doing the way be left open for a more radical destruction. The people are supremely interested in protecting the citizen voter against the prostitution of his character in the casting of a venal ballot.

The system devised by the Legislature to enforce the secrecy of the ballot seems a total failure, unless we give effect to the provisions enacted to sustain it. Genuine ballot reform, as the people have chosen to have it, in this and many other States, means the



purity of the ballot, and that seems best attained by the plan of a uniform or secret ballot. If we destroy any of the safeguards erected and intended to be maintained about the voter for his protection against improper influences and intimidation, we at once do an act in encouragement of the very evil sought to be prevented. If the law provides for a uniform ballot, to originate from an official source, and a plan to render the vote for him who casts it absolutely indistinguishable, and, therefore, absolutely secret, may be construed one way, in the case of a mistake, as here, then is it always open to such construction: for the proof of a fraudulent intent in the preparation and distribution of ballots to be used at a polling place is, very obviously, difficult, if ever possible. Nor ought the burden of that proof, in my opinion, to be thrown upon the candidate whom it has served to defeat. He has the right, as have the people generally, to rely upon a strict compliance with the terms of the election law and to an election held according to its requirements. If the law is not to be nullified in an indirect manner, then its material directions must be heeded, and the consequences it attaches to a disregard of its provisions must be allowed. The decisions of the courts in Missouri, Rhode Island and Connecticut, which are referred to, and which I need not quote from here, are all in accord with these views, and to the effect that it is not competent to inquire into the intent or the consequences of a violation of the legislative requirements as to the ballot to be cast at an election. I am for maintaining the integrity of this law and for construing it as it is written.

And the position of the contestants here finds ample support as well in the dissenting, as in the prevailing, opinions of that court. Peckham, J., dissenting, writes:

"It is not claimed that any but qualified voters voted at the election in this senatorial district, and it was conducted quietly, honestly and fairly, so far as these papers disclose, without a thought to the danger impending over such election by a slight mistake in the distribution of these ballots, in regard to the commission of which not one of the men who voted them, so far as it appears by the record, was in the least degree responsible.

It is said that if this be the correct interpretation of the act, then a way has been found by which to positively identify the kind of ballot each voter cast, and the law is, in this way, rendered wholly nugatory. This, however, is not, I think, the inevitable result. In the first place, we are bound to assume that public officers will, as an usual thing, honestly perform their official duties.

Those who voted these ballots might very well have had the opportunity of placing pasters inside them and have, in fact, voted in a way opposite to that in which the outside of their ballots indicated, and in this way the mark on the ballot would not necessarily show the way in which the elector voted.

In order to condemn a ballot it is necessary to prove that the ballot was marked either by the voter or by another, with his knowledge, with his intent, or the intent known to him, of such person, that it might afterwards be identified.

To prove the requisite facts, however, it is not necessary to call the voter or any person acting in complicity with him, but the same may be proved, like other facts, by any competent evidence; nor is it necessary to show who the voter was who cast the ballot; it is sufficient, if it be shown that the ballot was marked with the illegal intent by whomsoever cast.

The marks placed upon a ballot, or a series of ballots, may be of such a character as, of themselves, to furnish strong proof that they were placed thereon for the purpose of identification, and with other circumstances, even slight, may establish the illegal intent.

The main purpose of the system was to enable the voter so to cast his ballot that no person would know for what candidates he voted. It was made illegal for a voter to cast a ballot which had in any way been marked for identification, and such ballots were rendered void and of no effect. It is provided in section 35 that "no voter shall place any mark upon his ballot or do any other act in connection with a ballot with the intent that it may be identified as the one voted by him; no person shall place any mark upon or do any other act in connection with a paster ballot with the intent that it may afterwards be identified as having been voted by any particular person. When a ballot has been deposited in a ballot-box, upon which, or upon a paster affixed thereto, a writing or mark of any kind has been placed by the voter or by any other person, to his knowledge, with the intent that such ballot shall afterwards be identified as the one voted by him, the same shall be void and of no effect."

This section condemns a ballot, not only if it was marked for identification by the voter himself, but also if, with his knowledge or assent, it was marked for identification by any other person. Whether the ballot was marked by himself or by any other person, it is sufficient, in order to condemn it, to show his intent. When the ballot was marked by any other person, before it can be condemned, it must be shown that it was so marked

with the voter's knowledge, either with his intent or the known intent of such other person that it might afterwards be identified. The facts requisite to condemn the ballot under these provisions can be proved by any competent evidence. They may be shown by the evidence of the voter, or of any other person placing the mark on the ballot, or by any competent evidence, even against the evidence of those two, sufficient to satisfy the judicial mind of the existence of the facts. The whole field of inquiry is open, as in any case where a question of fact is to be tried and determined. If the facts could be proved only by calling the voter, or some other person in complicity with him in placing the mark upon the ballot, it is manifest that these provisions of the ballot law would be substantially useless, as no other person could know by whom the ballot was cast; and thus the essential witnesses in nearly every case could not be produced. Nor can it be needful to show who the voter was who marked or cast the ballot with illegal intent. It must be sufficient to show by any competent evidence that the ballot was marked with the illegal intent, by whomsoever cast. The marks placed upon a ballot or upon a series of ballots may be such as, of themselves, to furnish strong and persuasive evidence that they were placed upon the ballots for the purpose of their identification, and with other circumstances, even slight, they may establish the illegal intent.

These laws should be liberally interpreted so as to promote the ends for which they were enacted; and the courts should not permit their purpose to be defeated by the innocent neglect, chicanery or wilful misconduct of election officers. The law condemns ballots marked for identification, and such marking strikes at the very root of the ballot-reform system."

This is the dissenting opinion.

Again, we ask how about the actual, frequent presence of the party "worker" in the booth with the voter?

The basic principle is that a ballot marked for identification is an illegal ballot and must be rejected. It was conceded, upon the argument before the committee, that where a voter swears falsely to a total physical disability, as, for instance, total blindness or paralysis, rendering him physically totally unable to fold his ballot, thereby securing the presence of an outside party with the voter in the secret booth, thus enabling such party to know, from actual observation, the particular ballot cast by the voter, that such ballot is a marked ballot within the spirit, purpose and principle of the law. And beyond any controversy it

is so. The principle, therefore, which is expressly declared in the statute, with reference to ballots marked so as to be identified or specifically followed, must apply as much to the one case as to the other, and the ballot must be rejected in the one case as in the other. The Senate committee recognized this precise situation. What can be the difference, in principle, between a ballot marked by means of some character placed upon the ballot, and one marked by a third party from actual observation or personal supervision of the voter in the preparing of the ballot about to be put into the box? The committee concedes that there is and can be no difference. Where the vote is proven in the case of a ballot marked for identification by having placed upon it conspicuously some distinguishing mark, the course is plain and easy, because the ballots thus marked themselves declare precisely for what candidate they were cast; and the remedy is simply to subtract from the total number of votes given to such candidate the number of votes thus illegally cast—the number of which is thus specifically and exactly known. The Senate committee found themselves confronted with just this situation, and they set about to apply the remedy, which is universally conceded as a correct principle of law, namely, that such ballots should be rejected. But at this point they fell into two plain errors.

The evidence of the witnesses established beyond controversy that the practice of having a third party, who, almost, if not entirely, without exception, was a party worker at the polls, accompany voters into the booth, was carried on generally throughout the day; and the number of times this was done is not and cannot be shown. Some of the witnesses, however, under a persistent questioning by the lawyers, were driven into making an attempt to guess at about what they thought the numbers might have been in some cases.

Thus the witness, Wulff, testifying, with reference to the twenty-first district of the Tenth Ward, swears "that there were a great many persons" thus illegally accompanied into the booth by third persons, and, being compelled to make some sort of an estimate, adds that "he thinks not less than twenty-five."

And the witness, William G. Porter, testifying as to the same violations of law, and in the same district as the witness, Wulff, also testifies that there were a great many persons thus illegally voting; and, when in his turn he is fairly pushed into attempting a guess, says, "I should say, if I was to guess at it, anywhere from thirty-five to fifty." Speaking of these individuals, this witness

says: "I scrutinized them closely; there were one or two I thought might have been physically disabled. The others were not."

The witness, William J. Marshall, speaking of the sixth district of the Tenth Ward, says: "The Democratic watchers went in and out of the booths continually all day long, contrary to the protests. I used to go and tell them not to go in; they would go in in spite of what I said. I called the chairman's attention to it; sometimes he would go and speak to them, and then he would come back and say he couldn't do anything with them. It went on in that way all day long. The Democratic watchers went in and out of the booths with the voters all day long. It went on all day continuously. I would protest until I got tired and then I would commence again. The protest was directed to the chairman and an officer, Wilbur Prast; he wouldn't pay any attention. I directed his especial attention to what was going on on various occasions. James McCloskey and Michael McCarren went into the booths in this way all day." And this witness, in his turn, makes the guess, when compelled to do so, "there were at least 100 men assisted on that day; that is, as near as I could count; I missed a good many, of course."

So the witness, David T. Kenny, speaking of the sixth district of the Tenth Ward, makes his guess as follows: "They must have assisted anywhere from fifty to a hundred. I didn't count them. I am willing to swear there were fifty, and I think there were at least 100." This witness also swears that "the voters generally who were assisted took no oath at all. I named James McGibney as one who didn't take any oath. Others were Patrick Grandfield, Charles Johnson, and there were others. I am sure these men didn't take the oath."

So Daniel Cooper swears as to the thirteenth district in the Twelfth Ward: "There were many persons assisted to vote that day." And, making his guess, says at first, "at least twenty-five or thirty, or more." Upon further reflection the witness testifies: "In that district were there 251 votes received; of that number I should say that there were 100 who were assisted, if not more; I think I would swear to a hundred. Q. Would you swear there were 190? A. I am candid so far as fifty; I would swear to a hundred, but so far as 190 I wouldn't swear."

So the witness, John J. Fox, swearing, with reference to the thirteenth district of the Tenth Ward, says: "There were great irregularities at that election; men said their eyesight was bad, and they voted in that way when they weren't physically disabled; there were fifty such, anyhow; there were more; but fifty

anyhow; they had other persons go into the booths with them — Democratic workers; I am swearing positively to fifty that were assisted on that day; there were more; but I am swearing to fifty; their eyesight was good, I know, because I saw them; I have lived in that ward a great while and know them, and they can see more than I can; I know, from seeing them around the street and knowing their age, and from their actions and appearance at the time, that they were not unable to see; that occurred in a great many instances; at least fifty.”

So the witness, Peter E. Hayes, testifying as to the tenth district of the Tenth Ward, swears: “I saw men go into the booths with the voters all day; that is, Joe McGary, Frank Belford and Thomas Mackin; they went in with the voters right along, and they went in and out with about every voter that came along; the voters weren’t sworn in or anything; when he got the ballot he went into the booths; those men went into the booths to fold them for them; I can’t say how many there were; there were seventy-five at the very least; anyhow, it continued all day.”

So Edward Haage, testifying, with reference to the seventh district of the Twelfth Ward, says: “During the day Robert O’Donnell, a Democrat, went in several times during the day, and particularly with one George Abrams; he was going to go into the booth with George Abrams, and I objected to him because he was in several times during the day; I thought it was too one-sided to have him go in all the time; but it didn’t count, he went in anyhow; I mean he went in with those persons without their requiring or asking assistance; he pushed himself forward every time and made himself officious to go in there, and he went in; I speak only of those I saw go in; I think there were five or six; something like that; I saw five or six.”

John Kane, testifying, with reference to the sixth district of the Tenth Ward, upon the subject of this “assistance,” says “that over a hundred, at an estimate, entered that booth during the day.” John Kane, making his guess at the number of persons assisted in the sixth district of the Tenth Ward, says he should think “it was fully a hundred and fifty.”

Thomas B. Kelly, testifying as to the thirteenth district of the Tenth Ward, swears, in making his guess, “that between forty and fifty persons were assisted in preparing their ballots—the Democratic captain of the district assisting most of them; that none of those assisted were blind”—with, perhaps, the exception of one man.

William Telford, testifying as to the eighteenth district of the

Tenth Ward, swears that Joseph McGary and others went to the doors of the booths from the time the polls opened until they closed, going in with the voters without being requested." And witness then named certain particular persons as to whom "McGary followed into the booths; that he went into the booths unsolicited by them; that the persons so assisted had not taken the disability oath; that from seventy-five to one hundred and fifty persons were assisted by McGary and others, one or two taking the disability oath."

So Charles H. Pease, testifying, with reference to the nineteenth district of the Tenth Ward, swears "that thirty-five Italians were assisted that were not disabled, and about fifty persons in all received assistance. That about this form of disability oath was given: "Take off your hat and hold up your hand. You do solemnly swear that you are disabled from preparing your ballots." "That the voters were told they were disabled by a man who came with them; that at least twenty men were assisted who were not entitled to assistance; the chairman being informed by Democratic workers that these men were disabled, and the same oath was then given."

William Frick, speaking, with reference to the same district as the last witness, that is, the nineteenth district of the Tenth Ward, corroborating the witness, Pease, says: "That the Republican inspector objected, as any election officer, and not as a partisan, to the way in which they were going in and out of the booths.

The witness, Henry Wetzler, speaking of the same district, the nineteenth district of the Tenth Ward, gives it as his guess "that a great many Italians were assisted," and "that from thirty to fifty persons were assisted in addition to the Italians who were assisted."

Angelo V. Franze, testifying, with reference to the seventh district of the Tenth Ward, swears "that about twenty-five or thirty persons were thus assisted; that about half of them did not take any disability oath."

The Senate committee, upon this testimony, threw out 11 votes.

John Gutzler, testifying, with reference to the twenty-fourth district of the Tenth Ward, swears that when he arrived at the polls in the morning he was met by the Democratic captain, Mr. Farrell, who said: "Now, Gutzler, let's make an agreement: you assist your men and I will assist mine." That witness said he didn't think his men needed any assistance, and he wouldn't go into any combination like that. That almost the first voter to come in was asked by the chairman of the board: "Do you want

this man to assist you?" referring to one Hugh Mulligan. The voter said, "Yes," and Mulligan went into the booth with him. And then the witness, making his guess under questioning, says "that Mulligan assisted about thirty different men during the day, the majority of the thirty being personally known by the witness; that all took the blind oath; that, to the personal knowledge of witness, they were not blind."

John Eppinger, testifying, with reference to the nineteenth district of the Tenth Ward, swears "that voters were assisted all day long by about two workers; that as many as thirty-five or thirty-six Italian voters were assisted; and that the persons assisted were not blind or disabled in any way; that they were assisted by Democratic workers; that he didn't make a memorandum, as poll clerk, of every person who was assisted." And this witness, as his individual guess, when forced to make one, thought "there were ten or twelve persons besides the Italians who were thus assisted."

Witness, Watzler, made it as his guess that there were from thirty to fifty in addition to the Italians.

The witness, Frederick Viet, testifying, with reference to the third district of the Twelfth Ward, says "that at about 9 A. M., the witness found one William Ryan, a Democrat, concealed in one of the election booths; that a Republican watcher called his attention to Ryan's presence in the booth; that witness protested and demanded that Ryan should come out of the booth, and that Ryan refused, and thereupon witness jumped over the table and pulled him out; that four, or five, or six, or seven persons were sworn in and assisted, and that about twenty-four persons were assisted in addition; that others were assisted by men who had concealed themselves in the booths." That is the guess of this witness.

William H. Whiting, testifying as to the same, the third district of the Twelfth Ward, swears "that he saw persons go into the booths attended by others who had no official position at the polls; that this occurred on several occasions; that the Republican officers protested against this, but that their protests weren't given any attention." This witness is then pressed into the guessing-match, and, as his guess, he ventures "that two-thirds of the persons assisted did not need assistance; that witness thinks fifty or sixty persons received assistance and that only a few of those assisted were sworn; that there was no formality and all that was asked was 'do you swear you are blind?'"

This is a fair and complete example of the testimony before the Senate committee, taken at random and without any attempt



whatever at selection upon the question of the extent of this violation of the law which the Senate committee had pronounced "best evidence of the most shameless disregard of the laws guarding the secrecy of the ballot."

This evidence establishes beyond controversy or question the great fact that in these and all of the districts as to which similar testimony was offered, there was an utter disregard of the law, amounting, in effect, to its nullification. The guesses and attempted estimates under compulsion, and showing such wide variations, with reference to the same district of the same ward by the different witnesses, obviously cannot be taken as proving explicitly the number of times in each case that the violation of the law occurred, but they go simply as strengthening (if it needed strengthening) the testimony establishing the great main fact of the continual and utter disregard of the law during the entire election. The disposition of the case by the Senate committee upon this proof is curious. For instance, in the twenty-first district of the Tenth Ward they rejected forty votes. In the sixth district of the Tenth Ward they rejected the entire poll, and this, beyond any question, was under the proper application of the rule of law as laid down by the committee itself, and conceded by the Committee of Elections of the Constitutional Convention, that "where illegal votes have been cast, the true rule is to purge the poll by first proving for whom they were cast and thus ascertaining the real vote, but, if this cannot be done, then to exclude the poll altogether." And that "under the present election law, known as the Ballot Reform Law of 1892, secrecy of the ballot is an essential feature, and, if any voter attempts to exercise his vote in such a way as to reveal the contents of his ballot, his vote should not be counted." (Nichols v. Board of County Canvassers, 129 N. Y., 395.)

In the seventeenth district of the Tenth Ward the Senate committee rejected five votes. In the thirteenth district of the Tenth Ward the committee, for some inscrutable reason, refused to reject any votes, although two witnesses swear absolutely, positively and without contradiction, and of their personal knowledge, and state abundant reasons for their knowledge, that "from forty to fifty persons, most of whom were young men, and were assisted in voting (viz., a party worker went into the booth with them), mostly by the Democratic captain of the district, were not blind or otherwise physically disabled."

And in the thirteenth district of the Twelfth Ward the committee rejected eighty-one votes. In the tenth district of the Tenth Ward the committee rejected seventy-five votes. In the eighteenth

district of the Tenth Ward the committee rejected seventy-five votes. In the twenty-fourth district of the Tenth Ward the committee refused to reject any votes, and apparently did not take that district into consideration at all, since they do not in any way refer to it, although, by the testimony, it is clearly established and not controverted that the Democratic captain proposed the first thing in the morning to the Republican captain of the ward that they enter into a corrupt combination, to do which was refused; that one certain Mr. Mulligan assisted men during the entire day, according to the estimate of the witness at least thirty, the majority of whom were personally known to the witness, who states that to his personal knowledge they were not disabled in any way. Why the committee did not treat this testimony in the same way that they did others in which the testimony was of absolutely the same character, it is impossible to say.

In the seventh district of the Twelfth Ward the committee rejected twelve votes. In the seventeenth district of the Tenth Ward the committee rejected five votes. In the nineteenth district of the Tenth Ward the committee rejected fifty votes. In the seventh district of the Tenth Ward the committee rejected eleven votes. In the fourth district of the Ninth Ward the committee rejected twenty-two votes. In the third district of the Twelfth Ward the committee rejected fifty votes. In all, the committee rejected a total of 1,345 votes.

The Assembly, applying more logically the rule, threw out, in addition, upon the same proof, three districts included in the Second Senatorial, aggregating 1,357 votes. So that under the action of both committees, notwithstanding the plain error of the Senate committee, there was thrown out an aggregate of 2,308 votes, of which 2,053 were held to have been Democratic, although the proof does not show for whom they were cast. If the law is followed at all, it should be correctly followed, and a large Republican majority results from the proof as it stands.

Now, it is obvious that the Senate committee arrived at these results simply by seizing arbitrarily upon some number, sometimes the highest and sometimes not, which some witness ventures as a guess of the number of times that this gross violation and disregard of the most essential feature of the whole ballot law occurred, while swearing emphatically and without qualification that the fraud continued all day.

It is respectfully submitted that this is illogical and unwarranted, and that the decision should have been, and must be, upon the great question as to what to do with an election in an

election district where the great essentials of the law are treated with contempt and utterly violated. It is submitted that the Senate committee, recognizing so clearly the principle of law contended for here, and seeking to apply it, fell into great error in arbitrarily fixing upon any of these numbers as specific and absolute, when there was never even a pretense that they were other than mere guesses by the witnesses at a time long subsequent to the election, the great main facts of which, however, remained clearly fixed in their memory, and as to which they clearly and positively spoke.

The Court of Appeals refuses to accept infinitely stronger testimony as establishing as definite the number of illegal votes, where the proof is of a general fraud.

In *Judson v. Thacher* (55 N. Y., 525), the court says: "It was conceded by the judge on the trial that the evidence would have warranted the jury in finding that the relator and McCarty together received 334 votes, and, for the purposes of this case, the fact must be deemed to have been established. As the whole number of votes cast at the election was 729, if all the ballots cast beyond the 334 had been given for the defendant, his vote could not have exceeded 395. The return, however, gives him 460 votes, which is sixty-five in excess of any number which could have been given him by the electors. It follows, therefore, that among the ballots upon the table, there were at least sixty-five spurious votes, which were counted and returned as genuine by the inspectors. The proof on the part of the plaintiffs, if credited by the jury, rendered it certain that false ballots had been put into the box or upon the table, and that real ballots had been abstracted.

"The judge, in his charge to the jury, instructed them that nothing but intentional fraud upon the part of the inspectors would justify them in entirely setting aside the return. The charge upon this point was, in my opinion, erroneous. The law prescribes the duties of returning officers, and the mode by which the results of elections shall be authenticated. But it regards the returns as presumptive evidence only of the facts contained in them. They may be impeached for error, and, whether the error is that of the inspectors or arises from the interference or illegal conduct or acts of third persons, is immaterial. The integrity of the returning officers is not necessarily involved in the inquiry as to the truth of the return. They may have been deceived and innocently induced to make a certificate false in fact. In this case there was proof of a double fraud; and when it appeared that ballots had been changed, as well as abstracted, and that the count related, as well to the substituted as the genuine ballots, the return was no longer entitled

to be regarded. It was rendered wholly uncertain to what extent the fraudulent substitution had been carried, and it was not material whether the inspectors were privy to the fraud by which the uncertainty was occasioned.

It cannot be assumed that only sixty-five fraudulent votes had been placed in the box or on the table. The extent of the fraud could only be ascertained by an inquiry as to the vote of all the electors who participated in this election. The fraud affirmatively proved rendered the return so uncertain and unreliable that it could not be used for any purpose, and its value as evidence was wholly destroyed." (People ex rel. Judson v. Thacher, 55 N. Y., pages 533, 534, 535.)

But it is respectfully submitted that the Senate committee immediately fell into another error quite as great and of positive injustice to one of the candidates; for the committee not only thus arbitrarily, seized upon numbers, in the very nature of the testimony uncertain and never pretending to be anything else, but they also assumed that all of those fraudulent votes were cast for a particular candidate and charged the whole mass of reeking fraud up to that candidate; so that a gentleman coming up to Albany with what he doubtless believed to be an honorable majority, is informed by this committee, and has it immovably stuck upon him by this committee, that at least eleven-twelfths of his majority is rotten with fraud.

It is submitted as a general proposition that if an election in any particular district or districts is shown to be so generally vitiated by fraud as to demand the rejection of eleven-twelfths of it, that it is impossible to see what it is that saves the other twelfth.

So it was suggested upon the argument that this committee might reject all the votes which the Senate committee did, and in addition all the votes of fraudulent polls in the districts in which the same violation of the law, additionally shown before this committee, and the sitting members would still have a majority of eighty votes.

*Quære.* If an election is fraudulent enough upon proof of general fraud to cast out about twenty-four-twenty-fifths of it, what is it that save the other twenty-fifth?

The question was asked, on the oral argument, whether it was not necessary for the contestants to show, by specific instances, that the outside party who accompanied the voter into the booth, actually bribed, or tried to bribe. That money was actually used. We say decidedly no. The Nichols case (129 N. Y., 395) definitely answers that very question in the negative. And it is submitted that even if the motives were not actually corrupt, and the statute were thus disregarded, out of reckless determination, or the motives

of zealots, whether Democratic or Republican or Prohibitionist, or "A. P. A's," or what not, to make votes for a particular party or candidate, it must always be condemned as illegal, and the statute sustained. But no inference, but fraud and corruption, can be drawn from the practices established by the evidence in this case. The court, in the Nichols case, notwithstanding that a fraudulent purpose was there expressly negatived, in the conclusion, says, Ruger, Ch. J., writing: "But let us look further at the motives which may reasonably be supposed to have actuated the minds of the parties charged with the duty of handling these ballots, by their unlawful manipulation." And he finds there, upon evidence infinitely less strong than is here presented, that a fraudulent purpose and corrupt scheme is the necessary inference.

But the evidence in the case at bar is, however, direct and explicit that the purpose of these numberless invasions of the booths, was bribery. The contestants were forced to stipulate in, as part of the evidence here, the evidence in the Quinn-Coffey contest in the same senatorial district. This evidence had not been furnished contestants prior to the argument, and hence had not been available to them for presentation and argument before the committee. That this was unfortunate is very forcibly shown by the fact that in that testimony the witness, Henry Young, testified: "That a worker helped fold his ballots and offered him two dollars, 'to help him out,' witness wishing to vote the Republican ticket; and that this occurred right in the booth."

The witness, Stillman F. Kneeland, in this connection, testified (see p. 12 of minutes), "that he followed a certain man who had voted, and who had referred to a slip which he had in his hand for the purpose of giving the name and residence upon which he finally voted, the man having twice before tried to do so, into a political headquarters place within thirty-five or forty feet, of the polling place; that he saw many men who had voted pass through the general room of the headquarters into another room with a door marked 'private;' that the men would come in one at a time into that room, and pass immediately out. The witness then adds: "I heard them say, one to another, 'have you got your money?' and some would say 'no,' and they would say 'you have got to wait your turn.'"

Here is proof, clear and specific enough, that the scheme was one of bribery.

That false registration and repeating were extensively practiced, was also proven. In the Tenth Ward there were about seventy-five false registrations, and in the Twelfth Ward about one hundred.

(See testimony of witness, Thomas McGuire, giving names and particulars.)

An inspection of the poll-lists shows that considerably over a thousand persons in this senatorial district are there recorded as having been assisted, and in the vast majority of cases the record is simply "assisted" or that some individual named "went in booth"—or "eyesight"—even if these records were correct, which they are not, they only bear additional testimony to the extent of this corrupt and illegal practice; for it is incredible and contrary to common experience, that such vast numbers of voters in that district are totally physically disabled from "receiving and folding a ballot," or suffering from a physical disability "to enter the booth alone," which is the requirement of the statute. (See sec. 104.)

The provision of the statute (sec. 102), that "no person shall, while the polls are open at any polling place, do any electioneering within such polling place, or within one hundred and fifty feet therefrom, in any public street or room, or in a public manner"—as well as about every other essential provision of the statute, was generally disregarded in these districts.

The districts affected by the proof in this contest, out of the 136 districts comprising the Second Senatorial District, are the third, fourth, sixth, seventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth and nineteenth, of the Ninth Ward; the sixth, seventh, tenth, thirteenth, seventeenth, eighteenth, nineteenth, twenty-first and twenty-fourth, of the Tenth Ward; and the third, seventh, tenth, eleventh, thirteenth, eighteenth, nineteenth, twentieth and twenty-first, of the Twelfth Ward.

There are geographical and political boundary lines between the notorious quarters of the State known as the "Gravesend" and "Waterfront" districts, of Brooklyn, but there seem to have been no lines of moral distinction during the election of November 7, 1893, when the spirit of fraud was so rampant in these localities.

It is respectfully submitted that sound public policy and sound law require the State to refuse to accept the returns from these districts which have so utterly violated the mandatory and essential provisions of the statutes. To do so leaves the contestants, Davis, Emerson, Brown, Tompkins and Gull, according to the returns in the districts where the law was observed, majorities respectively of 1,288, 1,260, 1,272, 1,294 and 1,301 of the legal votes.

GEORGE H. MALLORY,

*Of Counsel for Contestants.*

51 STATE STREET, ALBANY, N. Y.

## DOCUMENT NO. 50.

(In Response to Resolution No. 166, Vol. 2, Pages 307, 308.)

## Statistics Relating to the Cost of Printing the Official Ballots and also the Proceedings of Boards of Supervisors in the Several Counties of the State.

(Prepared and submitted by Edwin C. Rowley, Delegate from the Eighteenth district.)

COUNTY.	Cost per thousand for official ballots.	Number of ballots printed.	Total cost of official ballots.	Cost per page for printing proceedings.	Number of pages in proceedings.	Total cost of printing proceedings of the board of Supervisors.	Number of copies of proceedings printed.
Albany . . . . .	\$2 50	1,173,232	\$2,933 08	\$4 60	493	\$2,267 80	3,000
Allegany . . . . .	3 50	208,000	728 00	1 52	288	437 76	3,500
Broome . . . . .	3 60	240,000	864 00	2 25	336	756 00	4,500
Cattaraugus . . . . .	1 75 2 00	327,084	502 57	1 64	333	546 12	3,000
Cayuga . . . . .	3 80	252,000	957 60	3 75	236	885 00	10,000
Chautauqua . . . . .	3 00	633,750	1,901 25	1 60	272	564 00	3,000
Chemung . . . . .	3 00	152,000	456 00	1 95	212	463 40	3,000
Chenango . . . . .	3 50	135,000	472 00	2 72	240	652 80	6,000
Clinton . . . . .	3 50	125,000	437 00	90	160	144 00	300
Columbia . . . . .	5 00 6 00	200,000	1,163 10	1 06	532	563 92	600
Cortland . . . . .	3 00	145,312	435 94	2 69	162	435 78	3,500
Delaware . . . . .	3 50	180,675	632 36	4 00	168	672 00	7,000
Dutchess . . . . .	4 50	290,392	1,306 76	78	389	303 42	600
Erie . . . . .	3 25	868,800	2,823 60	2 00	400	800 00	3,000
Essex . . . . .	3 50 4 00	112,000	432 00	2 78	182	505 96	2,500
Franklin . . . . .	3 00	127,800	383 40	1 38	100	138 00	1,000
Fulton . . . . .	4 00	160,000	640 00	3 43	102	350 00	2,000
Genesee . . . . .	1 50 8 00 3 10	116,200	334 50	1 79	156	279 24	4,000
Greene . . . . .	4 75	100,000	475 00	2 40	244	585 60	3,000
Hamilton . . . . .	5 00	17,850	89 25	1 00	30	30 00	600
Herkimer . . . . .	2 50	175,000	437 00	2 47	228	563 16	5,000
Jefferson . . . . .	2 75	160,000	440 00	2 75	175	550 00	4,500
Kings . . . . .	4 30	4,500,000	19,350 00	69	1,300	897 00	300
Lewis . . . . .	4 00	90,000	360 00	2 39½	158	378 41	2,500
Livingston . . . . .	4 00	200,902	803 60	1 60	224	358 40	4,000
Madison . . . . .	1 20	388,467	466 16	3 15	255	803 25	7,000
Monroe . . . . .	3 00	646,800	1,940 40	4 32	196	846 00	6,000
Montgomery . . . . .	3 50	155,375	538 81	4 26½	146	623 00	3,000
New York . . . . .	3 75	7,765,690	29,121 00	25 36	118	2,993 19	2,000
Niagara . . . . .	3 50	300,232	1,050 81	1 74	327	469 80	4,600
Oneida . . . . .	1 60	800,000	1,280 00	2 66½	268	714 50	1,000
Onondaga . . . . .	2 00	1,190,000	2,380 00	1 61½	354	550 85	4,200

*Statistics Relating to Official Ballots — Continued.*

COUNTY.	Cost per thousand for official ballots.	Number of ballots printed.	Total cost of official ballots.	Cost per page for printing proceedings.	Number of pages in proceedings.	Total cost of printing proceedings of the Board of Supervisors.	Number of copies of proceedings printed.
Ontario . . . . .	2 50	135,000	337 00	1 00	222	222 00	3,000
Orange . . . . .	3 50	500,000	1,750 00	2 61	248	647 28	6,000
Orleans . . . . .	2 00 4 50	185,600	719 20	2 60	188	488 80	5,000
Oswego . . . . .	3 00	256,000	768 00	2 57	288	514 16	5,000
Otsego . . . . .	3 50	238,328	834 14	5 25	72	387 00	8,000
Putnam . . . . .	6 75	125,000	843 75	5 55½	54	300 00	1,000
Queens . . . . .	6 00	511,000	3,066 00	1 20	890	1,068 00	1,000
Rensselaer . . . . .	5 00	778,348	3,891 74	2 17	312	677 04	2,000
Richmond . . . . .	10 00	309,750	3,097 50	57	660	389 40	300
Rockland . . . . .	5 00	166,200	831 00	2 23	300	669 00	2,500
St. Lawrence . . . . .	2 00	93,500	187 00	3 00	174	522 00	5,000
Saratoga . . . . .	4 00	306,000	1,224 00	3 24	170	550 80	3,000
Schenectady . . . . .	5 00	77,900	389 50	1 30	362	470 60	2,500
Schoharie . . . . .	3 00	195,000	585 00	2 50	150	375 00	5,000
Schuyler . . . . .	3 60	129,600	466 56	3 18½	44	140 00	2,500
Seneca . . . . .	5 00	120,000	600 00	1 00	217	217 00	3,000
Steuben . . . . .	2 40	450,000	1,080 00	2 68	318	852 24	5,000
Suffolk . . . . .	1 25 2 35	290,500	557 28	1 23	215	264 45	1,000
Sullivan . . . . .	6 50	126,000	819 00	2 50	151	377 50	2,000
Tioga . . . . .	4 00	139,600	558 40	2 00	90	185 00	1,650
Tompkins . . . . .	3 00	134,400	403 20	2 55	164	418 20	5,000
Ulster . . . . .	8 00 3 50 4 50	384,800	1,854 80	1 38	292	402 96	2,000
Warren . . . . .	5 00	88,925	444 62	1 30	200	260 00	1,500
Washington . . . . .	3 50	200,000	700 00	3 39	148	501 72	6,500
Wayne . . . . .	2 00	264,000	528 00	2 40	200	480 00	5,500
Westchester . . . . .	4 00	1,000,000	4,000 00	1 95	552	1,076 40	2,500
Wyoming . . . . .	2 25 3 25	144,100	426 02	1 90	167	317 30	4,000
Yates . . . . .	2 28	117,000	263 35	2 38½	44	104 94	2,500
.....		29,404,022	\$107,380 25	.....	15,676	\$34,007 15	102,150

Average cost per thousand, \$3.65½. Average cost per page, \$2.16½.



**DOCUMENT NO. 51.**

[COMMUNICATION No. 23.]

(In Response to Resolution No. 161, Vol. 2, Pages 34, 92, 404.)

Statement of the Condition of Trust Companies in the City of New York, as Shown by Reports Submitted to the Department of Taxes and Assessments, for the Purposes of Taxation, for the Year 1894:

Name of Company.	Capital.	Surplus.	Assets.
Atlantic Trust Co.....	\$500,000	\$602,253	\$6,459,295
Central Trust Co.....	1,000,000	5,628,195	29,599,846
Continental Trust Co.....	500,000	343,725	3,017,526
Farmers' Loan and Trust Co.....	1,000,000	4,072,761	32,386,361
Holland Trust Co.....	500,000	16,952	1,935,182
Knickerbocker Trust Co.....	750,000	308,133	6,654,775
Manhattan Trust Co.....	1,000,000	248,977	5,275,743
Mercantile Trust Co.....	2,000,000	1,835,712	23,823,225
Metropolitan Trust Co.....	1,000,000	975,065	8,337,144
New York Life Insurance and Trust Co..	1,000,000	2,913,313	27,956,430
New York Security and Trust Co.....	1,000,000	1,041,330	9,219,299
Real Estate Loan and Trust Co.....	500,000	278,899	2,551,834
State Trust Co.....	1,000,000	838,658	7,665,345
Title Guarantee and Trust Co.....	2,000,000	874,501	3,560,537
Union Trust Co.....	1,000,000	3,864,804	32,811,314
United States Mortgage Co.....	2,000,000	635,913	7,119,954
United States Trust Co.....	2,000,000	9,010,980	51,314,168
Washington Trust Co.....	500,000	417,333	4,059,513

	Real estate assessed.	Deductions exempt securities.
Atlantic Trust Company.....		\$931,175
Central Trust Company .....	\$500,000	3,000,000
Continental Trust Company.....		832,000
Farmers' Loan and Trust Company.....	601,500	4,313,850
Holland Trust Company.....	132,800	481,377
Knickerbocker Trust Company.....		1,255,451
Manhattan Trust Company.....		1,212,590
Mercantile Trust Company.....	47,778	3,394,075
Metropolitan Trust Company.....	390,000	1,767,089
New York Life Insurance and Trust Company.....	485,000	4,462,934
New York Security and Trust Company.....		1,869,611
Real Estate, Loan and Trust Company.....		798,000
State Trust Company.....	97,339	1,841,086
Title Guarantee and Trust Company.....		2,338,500
Union Trust Company.....	1,150,000	4,627,500
United States Mortgage Company.....	69,250	2,150,000
United States Trust Company.....	725,000	8,404,250
Washington Trust Company.....		782,500

	Assessed valuation of capital.	Date of purchase of exempt securities.
Atlantic Trust Company .....	\$350,000	Unknown.
Central Trust Company.....	3,028,195	Unknown.
Continental Trust Company.....	20,000	Unknown.
Farmers' Loan and Trust Company.....		Unknown.
Holland Trust Company.....		Unknown.
Knickerbocker Trust Company.....	15,000	Unknown.
Manhattan Trust Company.....		Unknown.
Mercantile Trust Company.....	197,550	Unknown.
Metropolitan Trust Company.....	321,000	Unknown.
New York Life Insurance and Trust Company.....		Unknown.
New York Security and Trust Company.....		Unknown.
Real Estate, Loan and Trust Company.....		Unknown.
State Trust Company.....		Unknown.
Title Guarantee and Trust Company.....	336,000	Unknown.
Union Trust Company .....		Unknown.
United States Mortgage Company.....	212,027	Unknown.
United States Trust Company.....	2,000,000	Unknown.
Washington Trust Company.....	* 76,230	Unknown.

**DOCUMENT NO. 52.**

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**MINORITY REPORT**

From the Committee on Corporations in Regard to Proposed Amendment, O., I. 375, P. 395, Relating to Trusts or Combinations.

*To the Convention:*

The undersigned minority members of your Committee on Corporations, by this minority report, respectfully dissent from the report of said committee introducing proposed constitutional amendment No. 395 (Int. No. 375), entitled "Proposed constitutional amendment as to trusts or combinations."

Dated *August 10, 1894.*

CHARLES A. HAWLEY.  
L. R. DOTY.  
GEORGE R. LYON.  
GEORGE BARROW.  
DELOS McCURDY.  
W. T. EMMET.

**DOCUMENT NO. 54.**

(Belongs in Vol. 2, Page 567, in place of Doc. No. 36.)

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**MINORITY REPORT**

From Mr. Parmenter, of the Committee on Judiciary, Dissenting from Report of Said Committee Against Proposed Amendment, Introductory No. 383, General Order No. 45—the New Judiciary Article.

*To the Constitutional Convention:*

The undersigned, a member of the Judiciary Committee, disagreeing with a portion of the judiciary article recommended by the majority of that committee, respectfully dissents from the provisions of section 7, which relates to the Court of Appeals, the number of judges composing said appellate court and the abridgment of its powers and duties. Believing, as I do sincerely believe, that such appellate tribunal, constituting the court of last resort, should be given such number of judges as will enable it to speedily hear and decide with dispatch, each and every appeal which, under existing laws, shall be taken to this ultimate appellate tribunal, I disapprove of all attempts on the part of this committee to abridge the right of appeal as it now exists, so that a smaller number of appellate judges may be sufficient to dispose of the limited business it shall be called upon to perform under the proposed amendment favored by the majority of the committee.

In my judgment, the wiser course would be to increase the number of judges so that two quorums may sit at the same time, or alternately, as the court shall determine, and thus enable it to dispatch all the business which shall come before it in the course of litigation. By so doing, we will have, or at least may have, the Court of Appeals in session five days in each week, from the first of October to the last day of June in each year.

It seems to be conceded by the majority report, now before the Convention, that the existing Court of Appeals, with a chief judge and six associate judges, is not sufficient in number to master the appellate jurisdiction now conferred upon it, for two additional associate judges have been added to the present number. By such small increase in the number of judges some relief will undoubtedly come to the court, but, in my judgment, that will be clearly inade-

quate in the way of relief; for with only nine judges there cannot be organized two working quorums, and without that the court will hereafter continue as it has heretofore, to drag its slow length along and thereby fail to meet the approval of the people of this State.

It is not my purpose, at this time, to attempt to answer, or to discuss even, the able explanation made by the majority of the committee, by which the proposed article is supported, and, therefore, I shall conclude my dissent to the seventh section of the proposed article by submitting to the consideration of this Convention an amendatory section in the following form:

Sec. 7. The Court of Appeals is continued. It shall consist of the chief judge and associate judges now in office, who shall hold their offices until the expiration of their respective terms, and of seven additional associate judges, who shall be chosen by the electors of the State at the first general election held after the adoption of this article. The official terms of the chief judge and associate judges shall be fourteen years from and including the first day of January next after their election. At the first election of the additional seven associate judges, every qualified elector may vote for not more than four of the additional seven associate judges. After the additional associate judges are elected any seven members of the court shall constitute a quorum, and the concurrence of five of such quorum shall be necessary to a decision. Two quorums of said court may sit at the same time, or alternately, as the court shall determine. The court, or the chief judge, may order that any particular case, or class of cases, shall be heard before the full bench, or before not less than nine judges, and in every such case, the concurrence of a majority of the judges, before whom any such case is argued, shall be necessary to a decision. The court shall have the power to appoint and to remove its reporter, clerk and deputy clerk, and such other attendants as in its judgment shall be necessary.

ALBANY, *August 15, 1894.*

R. A. PARMENTER.

## DOCUMENT NO. 56.

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### MINORITY REPORT

From Mr. Woodward, from the Committee on Preamble and Bill of Rights, Proposing to Amend the Preamble of the Constitution, also add New Sections to the Bill of Rights.

#### PREAMBLE.

We, the People of the State of New York, hold these truths to be self-evident: That all men are born free and equal; that all governments are founded upon one or the other of two principles. Upon equal rights or upon exclusive privileges. That our government, both State and National, is founded upon the principle of equal rights.

That grateful to Almighty God for our freedom, in order to secure those rights and the blessings of liberty, we do establish this Constitution:

Sec. 2. The State of New York is an inseparable part of the American Union, and the Constitution of the United States, within its legitimate sphere, is the supreme law of the land.

No person has a right, in this State, to incite others to the commission of crime or violence, or to advocate in public doctrines, tending directly or indirectly to overthrow or abrogate the rights of the people to enjoy property, life, liberty, or the pursuit of happiness.

Sec. 8. Every citizen of this State shall be free to obtain employment whenever possible, and any person, corporation or agent thereof, unlawfully or maliciously interfering or hindering in any way, any citizen or person from obtaining or enjoying employment already obtained, shall be deemed guilty of a crime, or misdemeanor, depending on the means used.

Sec. 9. The rights of the laborers shall receive just protection, through laws calculated to protect him in his labors, and to promote the industrial welfare of the State.

Sec. 7. The people of this State have a right to assemble together to consult for their common good, or to instruct their representative, and to apply to the Legislature for the redress of grievances.

But, secret societies, associations or combinations illegally interfering with the business or occupation of private individuals or corporations, by force of numbers and violence, should be suppressed.

The rights enumerated in this Bill of Rights shall not be construed to limit other rights of the people not therein expressed. This declaration of rights and privileges of the inhabitants of this State is hereby declared to be a part of the Constitution of the State, and shall not be violated under any pretense whatever.

## DOCUMENT NO. 58.

(Reprint of Document 15, as Corrected.)

List of Delegates to the Constitutional Convention of the State of New York for the Year 1894, with their Politics and Post-office Addresses.

Hon. Joseph H. Choate, President, home post-office address, No. 50 West Forty-seventh street, New York.

District.	Name, Politics and P. O. Address.
22.	Vasco P. Abbott, Rep., Gouverneur.
27.	Milo M. Acker, Rep., Hornellsville.
1.	Nathaniel S. Ackerly, Rep., Northport.
3.	William H. Allaben, Rep., 905 De Kalb avenue, Brooklyn.
24.	Thomas G. Alvord, Rep., 514 Turtle street, Syracuse.
16.	Charles W. H. Arnold, Rep., Staatsburg.
22.	William H. Baker, Rep., Constantia.
19.	A. Bleecker Banks, Dem., 327 State street, Albany.
28.	John A. Barhite, Rep., 27 Madison street, Rochester.
23.	James W. Barnum, Rep., Cherry Valley.
24.	George Barrow, Rep., Skaneateles.
31.	Tracy C. Becker, Rep., 160 Highland avenue, Buffalo.
8.	John Bigelow, Dem., 21 Gramercy Park, New York.
14.	Stephen S. Blake, Dem., 1466 Lexington avenue, New York.
7.	John M. Bowers, Dem., 30 West 18th street, New York.
20.	Edward A. Brown, Rep., Dolgeville.
22.	Elon R. Brown, Rep., 43 Massey street, Watertown.
11.	William P. Burr, Dem., 362 West 46th street, New York.
17.	George H. Bush, Dem., Ellenville.
D. at L.	J. Rider Cady, Rep., 25 Union street, Hudson.
13.	James P. Campbell, Dem., 20 West 70th street, New York.
31.	Jonathan W. Carter, Rep., Eden Valley.
27.	Owen Cassidy, Rep., Havana.
17.	Howard Chipp, Jr., Dem., 183 Fair street, Kingston.
32.	Frank B. Church, Rep., Wellsville.
28.	George W. Clark, Rep., Penfield.
25.	H. Austin Clark, Rep., Owego.
2.	William H. Cochran, Dem., 605 Third street, Brooklyn.
31.	John Coleman, Rep., 32 Newell avenue, Buffalo.
23.	Henry J. Cookinham, Rep., 5 Clark Place, Utica.
26.	George R. Cornwell, Rep., Penn Yan.
19.	Edwin Countryman, Dem., 202 State street, Albany.
12.	John D. Crimmins, Dem., 40 East 68th street, New York.
25.	Abram C. Crosby, Rep., Delhi.
17.	George L. Danforth, Dem., Middleburg.
5.	William B. Davenport, Dem., 174 Washington Park, Brooklyn.
23.	John C. Davies, Rep., Camden.



- | District. | Name, Politics and P. O. Address.                               |
|-----------|-----------------------------------------------------------------|
|           | 31. George A. Davis, Rep., Lancaster, N. Y.                     |
|           | 14. John A. Deady, Dem., 108 West 122d street, New York.        |
|           | 32. Benjamin S. Dean, Rep., 105 West Second street, Jamestown.  |
|           | 6. William Deterling, Rep., 262 Penn avenue, Brooklyn.          |
|           | 11. Robert E. Deyo, Dem., 106 West 48th street, New York.       |
|           | 16. William D. Dickey, Rep., 3 Bay View avenue, Newburgh.       |
|           | 29. Lockwood R. Doty, Rep., Geneseo.                            |
|           | 26. Henry R. Durfee, Rep., Palmyra.                             |
|           | 13. Eugene Durnin, Dem., 416 West 147th street, New York.       |
|           | 15. William T. Emmet, Dem., New Rochelle.                       |
|           | 4. William A. Faber, Rep., 15 Kingsland avenue, Brooklyn.       |
|           | 5. Thomas J. Farrell, Dem., 162 High street, Brooklyn.          |
|           | 15. Andrew C. Fields, Dem., Dobbs Ferry.                        |
|           | 8. Frank T. Fitzgerald, Dem., 52 Beach street, New York.        |
|           | 1. Nicoll Floyd, Rep., Centre Moriches.                         |
|           | 28. Nathaniel Foote, Rep., 22 Meigs street, Rochester.          |
|           | 11. Francis Forbes, Dem., 8 West 56th street, New York.         |
| D. at L.  | John M. Francis, Rep., 191 Second street, Troy.                 |
|           | 4. Andrew Frank, Rep., 547 Broadway, Brooklyn.                  |
| D. at L.  | Augustus Frank, Rep., Warsaw.                                   |
|           | 21. Frederick Fraser, Rep., Salem.                              |
|           | 25. Charles A. Fuller, Rep., Sherburne.                         |
|           | 32. Oscar A. Fuller, Rep., Wellsville.                          |
|           | 3. Solomon Galinger, Rep., 426 Monroe street, Brooklyn.         |
|           | 15. John Gibney, Dem., Sing Sing.                               |
|           | 8. Leonard A. Giegerich, Dem., 267 Seventh street, New York.    |
| D. at L.  | John I. Gilbert, Rep., Malone.                                  |
|           | 13. Thomas Gilleran, Dem., 120 West 59th street, New York.      |
|           | 9. Charles Goeller, Dem., 141 East 16th street, New York.       |
| D. at L.  | William P. Goodelle, Rep., 900 James street, Syracuse.          |
|           | 13. Andrew H. Green, Dem., 91 Park avenue, New York.            |
|           | 13. Joseph I. Green, Dem., 1187 Lexington avenue, New York.     |
|           | 17. John A. Griswold, Dem., Catskill.                           |
|           | 26. Frank H. Hamlin, Rep., Canandaigua.                         |
|           | 27. Charles A. Hawley, Rep., Seneca Falls.                      |
|           | 4. Joseph C. Hecker, Rep., 105 Roebling street, Brooklyn.       |
|           | 16. Ira M. Hedges, Rep., Haverstraw.                            |
|           | 9. Aaron Herzberg, Dem., 331 Broome street, New York.           |
|           | 31. Henry W. Hill, Rep., 39 School street, Buffalo.             |
| D. at L.  | Michael H. Hirschberg, Rep., Grand avenue, Newburgh.            |
|           | 7. Wright Holcomb, Dem., 46 East 11th street, New York.         |
| D. at L.  | Frederick W. Holls, Rep., Yonkers.                              |
|           | 9. Henry D. Hotchkiss, Dem., 32 Nassau street, New York.        |
|           | 15. Adolph C. Hottenroth, Dem., 169 Alexander avenue, New York. |
|           | 3. Stephen B. Jacobs, Rep., 160 South Third street, Brooklyn.   |
|           | 2. Almet F. Jenks, Dem., 92 St. James Place, Brooklyn.          |
|           | 29. I. Sam Johnson, Rep., Warsaw.                               |
| D. at L.  | Jesse Johnson, Rep., 308 Clinton avenue, Brooklyn.              |
|           | 4. Robert M. Johnston, Rep., 216 Lorrimer street, Brooklyn.     |
|           | 23. Abraham L. Kellogg, Rep., Oneonta.                          |
|           | 19. Dennis P. Kerwin, Dem., 43 Myrtle avenue, Albany.           |

- | District. | Name, Politics and P. O. Address.                                 |
|-----------|-------------------------------------------------------------------|
|           | 19. William Kimmey, Dem., Becker's Corners.                       |
|           | 6. John C. Kinkel, Rep., 198 Prospect avenue, Brooklyn.           |
|           | 9. Joseph Koch, Dem., Sherwood House, New York.                   |
|           | 6. Charles J. Kurth, Rep., 375 Fulton street, Brooklyn.           |
| D. at L.  | Edward Lauterbach, Rep., 2 East 78th street, New York.            |
|           | 20. Charles C. Lester, Rep., Saratoga Springs.                    |
|           | 24. Ceylon H. Lewis, Rep., 105 Furman street, Syracuse.           |
|           | 28. Merton E. Lewis, Rep., 837 East Main street, Rochester.       |
|           | 32. Charles Z. Lincoln, Rep., Little Valley.                      |
|           | 25. George F. Lyon, Rep., 235 Washington street, Binghamton.      |
|           | 1. Lucius N. Manley, Rep., 10 Pierson street, Long Island City.   |
|           | 25. William J. Mantanye, Rep., Cortland.                          |
|           | 12. Jacob Marks, Dem., 213 East 7 <sup>th</sup> street, New York. |
|           | 24. Louis Marshall, Rep., 222 Cedar street, Syracuse.             |
|           | 17. Jacob M. Maybee, Dem., Livingston Manor.                      |
|           | 21. Thomas W. McArthur, Rep., Glens Falls.                        |
|           | 12. David McClure, Dem., 22 West 49th street, New York.           |
|           | 10. Delos McCurdy, Dem., Park Avenue Hotel, New York.             |
| D. at L.  | John T. McDonough, Rep., 114 State street, Albany.                |
|           | 22. John G. McIntyre, Rep., Potsdam.                              |
|           | 32. Louis McKinstry, Rep., Fredonia.                              |
|           | 21. Chester B. McLaughlin, Rep., Port Henry.                      |
|           | 10. James W. McLaughlin, Dem., 280 Broadway, New York.            |
| D. at L.  | Daniel H. McMillan, Rep., 233 Pennsylvania street, Buffalo.       |
|           | 23. Charles S. Mereness, Rep., Lowville.                          |
|           | 2. John B. Meyenborg, Dem., 456 Ninth street, Brooklyn.           |
|           | 21. Charles H. Moore, Rep., Plattsburg.                           |
|           | 3. Charles B. Morton, Rep., 829 Monroe street, Brooklyn.          |
|           | 14. Michael J. Mulqueen, Dem., 57 West 113th street, New York.    |
|           | 27. William H. Nichols, Rep., Bath.                               |
|           | 7. De Lancey Nicoll, Dem., 123 East 38th street, New York.        |
|           | 6. J. Lott Nostrand, Rep., 16 Court street, Brooklyn.             |
|           | 26. John W. O'Brien, Rep., 116 Genesee street, Auburn.            |
|           | 9. Joseph M. Ohmeis, Dem., 114 Seventh street, New York.          |
|           | 15. William Church Osborn, Dem., Garrisons.                       |
|           | 29. Myron L. Parker, Rep., Lyndonville.                           |
| D. at L.  | John F. Parkhurst, Rep., Bath.                                    |
|           | 18. Roswell A. Parmenter, Dem., 113 Second street, Troy.          |
|           | 6. Charles L. Pashley, Rep., 59 Palmetto street, Brooklyn.        |
|           | 18. Amos H. Peabody, Dem., New Lebanon.                           |
|           | 18. John Hudson Peck, Dem., 3 Irving Place, Troy.                 |
|           | 1. Charles L. Phipps, Rep., East Rockaway.                        |
|           | 11. M. Warley Platzek, Dem., 530 Fifth avenue, New York.          |
|           | 29. William Pool, Rep., Niagara street, Niagara Falls.            |
|           | 30. James S. Porter, Rep., 289 Cedar street, Buffalo.             |
|           | 3. Henry A. Powell, Rep., 106 Rodney street, Brooklyn.            |
|           | 27. Charles R. Pratt, Rep., 318 William street, Elmira.           |
|           | 30. Harvey W. Putnam, Rep., 89 White Building, Buffalo.           |
|           | 28. James H. Redman, Rep., Hamlin.                                |
|           | 18. William J. Roche, Dem., 232 Third street, Troy.               |
|           | 19. Peter A. Rogers, Dem., West Troy.                             |

- | District. | Name, Politics and P. O. Address.                         |
|-----------|-----------------------------------------------------------|
| D. at L.  | Elihu Root, Rep., 25 East 69th street, New York.          |
| 18.       | Edwin C. Rowley, Dem., 611 Warren street, Hudson.         |
| 8.        | Elliot Sandford, Dem., 106 East 25th street, New York.    |
| 2.        | John G. Schumaker, Dem., 145 Joralemon street, Brooklyn.  |
| 12.       | Nelson Smith, Dem., 151 West 48th street, New York.       |
| 12.       | William McM. Speer, Dem., 224 West 59th street, New York. |
| 21.       | Edgar A. Spencer, Rep., 26 First avenue, Gloversville.    |
| 30.       | Philip W. Springweiler, Rep., 145 Monroe street, Buffalo. |
| 20.       | Abram B. Steele, Rep., Herkimer.                          |
| 42.       | William H. Steele, Rep., 162 East Second street, Oswego.  |
| 1.        | Frederic Storm, Rep., Bayside.                            |
| 5.        | William Sullivan, Dem., Pierrepont House.                 |
| 30.       | Thomas A. Sullivan, Rep., 171 Chicago street, Buffalo.    |
| 8.        | Morris Tekulsky, Dem., 39 Oak street, New York.           |
| 26.       | Frank E. Tibbetts, Rep., Ithaca.                          |
| 10.       | William Q. Titus, Dem., 235 East 30th street, New York.   |
| 2.        | Mirabeau Lamar Towns, Dem., 24 Eighth avenue, Brooklyn.   |
| 10.       | Charles H. Truax, Dem., 1992 Madison avenue, New York.    |
| 14.       | Chauncey S. Truax, Dem., 780 Madison avenue, New York.    |
| 10.       | Gideon J. Tucker, Dem., 317 Broadway, New York.           |
| 30.       | William Turner, Rep., 420 Front avenue, Buffalo.          |
| D. at L.  | Commodore P. Vedder, Rep., Ellicottville.                 |
| 5.        | William D. Veeder, Dem., 139 Pacific street, Brooklyn.    |
| 4.        | Frank H. Vogt, Rep., 969 Broadway, Brooklyn.              |
| 24.       | D. Gerry Wellington, Rep., Hamilton.                      |
| 20.       | Edward C. Whitmyer, Rep., 119 Front street, Schenectady.  |
| 16.       | Henry W. Wiggins, Rep., 12 Orchard street, Middletown.    |
| 7.        | Arthur D. Williams, Dem., 310 West 23d street, New York.  |
| 29.       | Nathan A. Woodward, Rep., Batavia.                        |

## OFFICERS OF THE CONVENTION.

## SECRETARY.

- | District. | Name and P. O. Address.                                  |
|-----------|----------------------------------------------------------|
| 28.       | Charles E. Fitch, 32 South Washington street, Rochester. |

## ASSISTANT SECRETARIES.

- 23. Edward M. Johnson, Oneonta.
- 27. Marcus M. Cass, Jr., Watkins.
- 32. James C. Sheldon, Randolph.
- 28. Emmit W. Parkhill, 11 Scio street, Rochester.

## STENOGRAPHER.

- 31. Herbert A. Briggs, 52 Niagara Square, Buffalo.

## ASSISTANT STENOGRAPHER.

- 31. George H. Thornton, 46 Fargo avenue, Buffalo.

## SERGEANT-AT-ARMS.

- 20. William W. Bennett, Round Lake.

## CONSTITUTIONAL CONVENTION.

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### ASSISTANT SERGEANT-AT-ARMS.

District.      Name and P. O. Address.

27. John McElroy, Hornellsville.

### LIBRARIAN.

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### ASSISTANT LIBRARIAN.

3. J. W. Jones, 570 Bedford avenue, Brooklyn.

### POSTMASTER.

18. J. S. Saunders, Grafton.

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16. John J. Brown, Newburgh.  
17. H. G. Getter, Middleburg.  
19. J. H. Rathbone, Albany.  
21. J. P. Brennan, Plattsburg.  
22. E. A. Fay, Potsdam.  
23. J. A. Cook, Vienna.  
24. Ray B. Smith, 407 Kirk Block, Syracuse.  
31. George B. Munn, 137 Glenwood avenue, Buffalo.

### PRESIDENT'S CLERK.

11. C. A. de Gersdorff, 29 Nassau street, New York.

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5. George D. Weeks, 481 Carleton avenue, Brooklyn.  
15. Hiram Van Tassel, Garrisons.  
26. Asa P. Fish, Dundee.

### JANITOR.

19. George E. Smith, Albany.

### ASSISTANT JANITOR.

Thomas Brown, New York.

### MESENTERS.

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20. A. B. Crumb, West Winfield.  
22. Joseph Fayel, Theresa.  
24. Thomas G. A. Cheney, 514 Turtle street, Syracuse.  
25. Edward M. Seacord, Cortland.  
28. A. D. Taylor, Fairport.  
29. W. T. Pool, Ransomville.  
30. F. C. Loomis, 391 Myrtle avenue, Buffalo.  
30. T. H. Rochford, 212 Clinton street, Buffalo.  
P. J. Haybyrne, 124 Monroe street, New York.

## PAGES.

District.	Name and P. O. Address.
6.	John Gueron, Staten Island.
5.	William Ross, 561 Decatur street. Brooklyn.
19.	George Tiernan, 23 North Knox street. Albany.
21.	F. M. Moore, 21 Broad street. Plattsburg.
23.	F. J. Guernsey, Rome.
25.	S. F. Barager, Candor.
26.	C. Weddigan, Throopsville.
19.	William Logan, 235 South Pearl street. Albany.
19.	James H. Millard, corner Washington avenue and Swan street. Albany.
19.	Samuel Palmer, Albany.

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Name.	Paper Represented.
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Hugh B. McLean,	Commercial Advertiser.
John W. Griffin,	Rochester Post-Express.
E. L. Murlin,	New York Tribune.
H. S. Cunningham,	Utica Morning Herald.
F. G. Mather,	Buffalo Express.
Edward G. Riggs,	The Sun.
William A. Hoy,	New York World.
R. H. Fuller,	Albany Journal.
Henry L. Stoddard,	New York Mail and Express.
Thomas Wallace,	Cohoes Evening Dispatch.
Hugh Hastings,	New York Times.
H. C. Gott,	Times-Union.
Frank Richter,	New York Staats Zeitung.
Harold W. Cole,	Albany Evening Post.
H. W. Smith,	Buffalo Commercial.
Edward S. Luther,	Albany Argus, New York Press and New York Morning Journal.
Joseph L. McEntee,	United Press.
Lewis R. Stegman,	Brooklyn Standard Union.

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STANDING COMMITTEES.

On Preamble and Bill of Rights:

Mr. Francis, chairman, Rensselaer.	Mr. Bigelow, New York.
Mr. Alvord, Onondaga.	Mr. A. H. Green, New York.
Mr. Augustus Frank, Wyoming.	Mr. Tucker, New York.
Mr. W. H. Steele, Oswego.	Mr. Schumaker, Kings.
Mr. Woodward, Genesee.	Mr. Veeder, Kings.
Mr. Parker, Orleans.	

Clerk, H. A. Getter. Room, Assembly 2.

On the Legislature — its Organization and the Number, Apportionment, Election, Tenure of Office and Compensation of its Members:

Mr. Becker, chairman, Erie.	Mr. Schumaker, Kings.
Mr. Barrow, Onondaga.	Mr. Crimmins, New York.
Mr. Lincoln, Cattaraugus.	Mr. Giegerich, New York.
Mr. Acker, Steuben.	Mr. Bush, Ulster.
Mr. E. R. Brown, St. Lawrence.	Mr. Peck, Rensselaer.
Mr. Dickey, Orange.	Mr. Osborn, Putnam.
Mr. Crosby, Delaware.	Mr. Sullivan, Kings.
Mr. Davies, Oneida.	
Mr. Root, New York.	
Mr. Morton, Kings.	

Clerk, George B. Munn. Room, Assembly 3.

On the Powers and Duties of the Legislature:

Mr. Vedder, chairman, Cattaraugus.	Mr. Roche, Rensselaer.
Mr. Goodelle, Onondaga.	Mr. Rogers, Albany.
Mr. Wellington, Madison.	Mr. Maybee, Sullivan.
Mr. Barhite, Monroe.	Mr. Kimmey, Albany.
Mr. Dean, Chautauqua.	Mr. Kerwin, Albany.
Mr. Johnston, Kings.	Mr. Hottenroth, New York.
Mr. Mantanye, Cortland.	
Mr. Moore, Clinton.	
Mr. Parker, Orleans.	
Mr. E. A. Brown, Herkimer.	
Mr. Nostrand, Kings.	

Clerk, George B. Munn. Room, Assembly 3.

On the Right of Suffrage:

Mr. Goodelle, chairman, Onondaga.	Mr. Bigelow, New York.
Mr. Cookinham, Oneida.	Mr. Tucker, New York.
Mr. Parkhurst, Steuben.	Mr. McClure, New York.
Mr. Lauterbach, New York.	Mr. Nicoll, New York.
Mr. Hill, Erie.	Mr. Dedy, New York.
Mr. Abbott, St. Lawrence.	Mr. Towns, Kings.
Mr. Wellington, Madison.	Mr. Cochran, Kings.
Mr. O'Brien, Cayuga.	
Mr. Wiggins, Orange.	
Mr. Alvord, Onondaga.	

Clerk, Ray B. Smith. Room, Assembly Parlor.

On the Governor and other State Officers, their Election or Appointment, Tenure of Office, Compensation, Powers and Duties :

Mr. McMillan, chairman, Erie.	Mr. McCurdy, New York.
Mr. Abbott, St. Lawrence.	Mr. Jenks, Kings.
Mr. Pool, Niagara.	Mr. Smith, New York.
Mr. O. A. Fuller, Allegany.	Mr. Tekulsky, New York.
Mr. Hamlin, Ontario.	Mr. Campbell, New York.
Mr. Mereness, Lewis.	Mr. Marks, New York.
Mr. Pratt, Chemung.	
Mr. Manley, Queens.	
Mr. Vedder, Cattaraugus.	
Mr. Hedges, Rockland.	

Clerk, H. G. Getter. Room, Assembly Ways and Means.

On the Judiciary :

Mr. Root, chairman, New York.	Mr. C. H. Truax, New York.
Mr. Marshall, Onondaga.	Mr. Parmenter, Rensselaer.
Mr. Cookinham, Oneida.	Mr. Countryman, Albany.
Mr. Becker, Erie.	Mr. Bowers, New York.
Mr. Cady, Columbia.	Mr. Nicoll, New York.
Mr. Parkhurst, Steuben.	Mr. Jenks, Kings.
Mr. Gilbert, Franklin.	Mr. Bush, Ulster.
Mr. J. Johnson, Kings.	
Mr. McMillan, Erie.	
Mr. Foote, Monroe.	

Clerk, E. A. Fay. Room, Senate Library.

On the State Finances, Revenues, Expenditures and Taxation :

Mr. Acker, chairman, Steuben.	Mr. F. T. Fitzgerald, New York.
Mr. Vedder, Cattaraugus.	Mr. Speer, New York.
Mr. I. Sam Johnson, Wyoming.	Mr. Smith, New York.
Mr. Cassidy, Schuyler.	Mr. Burr, New York.
Mr. A. B. Steele, Herkimer.	Mr. Mulqueen, New York.
Mr. Jacobs, Kings.	Mr. J. W. McLaughlin, New York.
Mr. O. A. Fuller, Allegany.	Mr. Blake, New York.
Mr. Tibbetts, Tompkins.	
Mr. Pratt, Chemung.	
Mr. Kellogg, Otsego.	

Clerk, J. H. Rathbone. Room, Court of Appeals Lawyers' Room.

On Cities, their Organization, Government and Powers :

Mr. J. Johnson, chairman, Kings.	Mr. A. H. Green, New York.
Mr. Francis, Rensselaer.	Mr. Davenport, Kings.
Mr. Becker, Erie.	Mr. F. T. Fitzgerald, New York.
Mr. H. A. Clark, Tioga.	Mr. Hotchkiss, New York.
Mr. C. H. Lewis, Onondaga.	Mr. Speer, New York.
Mr. Holls, Westchester.	Mr. Rowley, Columbia.
Mr. M. E. Lewis, Monroe.	Mr. Banks, Albany.
Mr. Spencer, Fulton.	
Mr. Morton, Kings.	
Mr. Coleman, Erie.	

Clerk, Ray B. Smith. Room, Assembly Parlor.

On Canals:

Mr. Cady, chairman, Columbia.	Mr. Danforth, Schoharie.
Mr. Porter, Erie.	Mr. Williams, New York.
Mr. Floyd, Suffolk.	Mr. Blake, New York.
Mr. Fraser, Washington.	Mr. Hottenroth, New York.
Mr. Baker, Oswego.	
Mr. Nichols, Steuben.	
Mr. G. W. Clark, Monroe.	

Clerk, John J. Brown. Room, Assembly 2.

On Railroads, Transportation and Electrical Transmission:

Mr. Davies, chairman, Oneida.	Mr. McClure, New York.
Mr. McIntyre, St. Lawrence.	Mr. Hotchkiss, New York.
Mr. Cornwell, Yates.	Mr. Chipp, Ulster.
Mr. Dean, Chautauqua.	Mr. Koch, New York.
Mr. Johnston, Kings.	Mr. Holcomb, New York.
Mr. Baker, Oswego.	Mr. Herzberg, New York.
Mr. Storm, Queens.	
Mr. McArthur, Warren.	
Mr. Springweiler, Erie.	
Mr. Redman, Monroe.	
Mr. Pashley, Kings.	

Clerk, J. A. Cook. Room, Assembly Library.

On Counties, Towns and Villages, their Organization and Government:

Mr. C. B. McLaughlin, chairman, Essex.	Mr. Maybee, Sullivan.
Mr. Floyd, Suffolk.	Mr. Kimmey, Albany.
Mr. Doty, Livingston.	Mr. Peabody, Columbia.
Mr. Mereness, Lewis.	Mr. Titus, New York.
Mr. Arnold, Dutchess.	Mr. Burr, New York.
Mr. Nichols, Steuben.	Mr. Herzberg, New York.
Mr. McKinstry, Chautauqua.	
Mr. G. W. Clark, Monroe.	
Mr. Carter, Erie.	
Mr. C. A. Fuller, Chenango.	
Mr. Kinkel, Kings.	

Clerk, J. P. Brenan. Room, Assembly 4.

**On County, Town and Village Officers, other than Judicial, their Election or Appointment, Tenure of Office, Compensation, Powers and Duties :**

Mr. Parkhurst, chairman, Steuben.	Mr. Sullivan, Kings.
Mr. Lester, Saratoga.	Mr. Rogers, Albany.
Mr. Mantanye, Cortland.	Mr. Emmet, Westchester.
Mr. Moore, Clinton.	Mr. Ohmeis, New York.
Mr. Barnum, Otsego.	Mr. Titus, New York.
Mr. Church, Allegany.	Mr. Kerwin, Albany.
Mr. Redman, Monroe.	Mr. Gilleran, New York.
Mr. Vogt, Kings.	
Mr. Jacobs, Kings.	
Mr. Hecker, Kings.	

Clerk, J. P. Brenan. Room, Assembly 5.

**On State Prisons and Penitentiaries and the Prevention and Punishment of Crime :**

Mr. McDonough, chairman, Albany.	Mr. Koch, New York.
Mr. Barhite, Monroe.	Mr. Rowley, Columbia.
Mr. Crosby, Delaware.	Mr. Campbell, New York.
Mr. O'Brien, Cayuga.	Mr. Meyenborg, Kings.
Mr. McArthur, Warren.	
Mr. Allaben, Kings.	
Mr. Andrew Frank, Kings.	

Clerk, H. G. Getter. Room, Assembly 7.

**On Corporations and Institutions not otherwise herein specified :**

Mr. Hawley, chairman, Seneca.	Mr. McCurdy, New York.
Mr. Dickey, Orange.	Mr. Veeder, Kings.
Mr. Barrow, Onondaga.	Mr. Banks, Albany.
Mr. H. A. Clark, Tioga.	Mr. Davenport, Kings.
Mr. W. H. Steele, Oswego.	Mr. Roche, Rensselaer.
Mr. Lyon, Broome.	Mr. Forbes, New York.
Mr. Storm, Queens.	Mr. Emmet, Westchester.
Mr. C. A. Fuller, Chenango.	
Mr. Lester, Saratoga.	
Mr. Doty, Livingston.	

Clerk, J. A. Cook. Room, Assembly Library.

**On Currency, Banking and Insurance :**

Mr. Augustus Frank, chairman, Wyoming.	Mr. Sandford, New York.
Mr. Davis, Erie.	Mr. Fields, Westchester.
Mr. Whitmyer, Schenectady.	Mr. Durnin, New York.
Mr. M. E. Lewis, Monroe.	
Mr. Phipps, Queens.	
Mr. Barnum, Otsego.	
Mr. Galinger, Kings.	
Mr. Deterling, Kings.	

Clerk, J. W. Titus. Room, Assembly 1.

On the Militia and Military Affairs:

Mr. Hedges, chairman, Rockland.	Mr. Gibney, Westchester.
Mr. Davis, Erie.	Mr. Cochran, Kings.
Mr. Ackerly, Suffolk.	Mr. Goeller, New York.
Mr. Galinger, Kings.	

Clerk, J. W. Titus. Room, Senate 1.

On Education and Funds relating thereto:

Mr. Holls, chairman, Westchester.	Mr. Deyo, New York.
Mr. Durfee, Wayne.	Mr. Sandford, New York.
Mr. E. R. Brown, St. Lawrence.	Mr. Peck, Rensselaer.
Mr. Hirschberg, Orange.	Mr. C. S. Truax, New York.
Mr. Hill, Erie.	Mr. Platzek, New York.
Mr. McDonough, Albany.	Mr. Gilleran, New York.
Mr. McIntyre, St. Lawrence.	Mr. Towns, Kings.
Mr. Tibbetts, Tompkins.	
Mr. Cornwell, Yates.	
Mr. Fraser, Washington.	

Clerk, J. H. Rathbone. Room, Assembly 6.

On Charities and Charitable Institutions:

Mr. Lauterbach, chairman, New York.	Mr. Giegerich, New York.
Mr. C. B. McLaughlin, Essex.	Mr. Danforth, Schoharie.
Mr. I. Sam Johnson, Wyoming.	Mr. Durnin, New York.
Mr. Cassidy, Schuyler.	Mr. C. S. Truax, New York.
Mr. A. B. Steele, Herkimer.	Mr. Forbes, New York.
Mr. Phipps, Queens.	Mr. Peabody, Columbia.
Mr. Powell, Kings.	
Mr. Arnold, Dutchess.	
Mr. Manley, Queens.	
Mr. Kellogg, Otsego.	
Mr. Deterling, Kings.	

Clerk, J. H. Rathbone. Room, Assembly 6.

On Industrial Interests:

Mr. Gilbert, chairman, Franklin.	Mr. C. H. Truax, New York.
Mr. M. E. Lewis, Monroe.	Mr. Crimmins, New York.
Mr. Barhite, Monroe.	Mr. Osborn, Putnam.
Mr. Wiggins, Orange.	Mr. Ohmeis, New York.
Mr. Coleman, Erie.	Mr. Goeller, New York.
Mr. Faber, Kings.	
Mr. Ackerly, Suffolk.	
Mr. Lester, Saratoga.	
Mr. Carter, Erie.	
Mr. Hecker, Kings.	
Mr. Kurth, Kings.	

Clerk, C. H. Bassett. Room, Court of Appeals Room.

## On Salt Springs:

Mr. Alvord, chairman, Onondaga.	Mr. Williams, New York.
Mr. Springweiler, Erie.	Mr. Mulqueen, New York.
Mr. Vogt, Kings.	Mr. Farrell, Kings.
Mr. Allaben, Kings.	

Clerk, George B. Munn. Room, Senate Room 5.

## On the Relations of the State to the Indians:

Mr. C. H. Lewis, chairman, Onondaga.	Mr. Platzek, New York.
	Mr. J. I. Green, New York.
Mr. Porter, Erie.	
Mr. Church, Allegany.	
Mr. Turner, Erie.	
Mr. Nostrand, Kings.	

Clerk, J. W. Titus. Room, Senate 1.

## On Future Amendments and Revisions of the Constitution:

Mr. Marshall, chairman, Onondaga.	Mr. Griswold, Greene.
Mr. Powell, Kings.	Mr. Parmenter, Rensselaer.
Mr. Spencer, Fulton.	Mr. Meyenborg, Kings.
Mr. Andrew Frank, Kings.	

Clerk, E. A. Fay. Room, Senate 6.

## On Revision and Engrossment:

Mr. Foote, chairman, Monroe.	Mr. Holcomb, New York.
Mr. Hawley, Seneca.	Mr. Farrell, Kings.
Mr. W. H. Steele, Oswego.	Mr. Bowers, New York.
Mr. Durfee, Wayne.	Mr. Deyo, New York.
Mr. O'Brien, Cayuga.	
Mr. Woodward, Genesee.	
Mr. Kurth, Kings.	

Clerk, J. J. Brown. Room, Senate Room 2.

## On Privileges and Elections:

Mr. Hirschberg, chairman, Orange.	Mr. Deady, New York.
Mr. Cookinham, Oneida.	Mr. Countryman, Albany.
Mr. Lester, Saratoga.	Mr. Chipp, Ulster.
Mr. Crosby, Delaware.	Mr. Gibney, Westchester.
Mr. Foote, Monroe.	
Mr. Lincoln, Cattaraugus.	
Mr. Durfee, Wayne.	

Clerk, J. A. Cook. Room, Senate 3.

## On Printing:

Mr. Hamlin, chairman, Ontario.	Mr. Marks, New York.
Mr. Pool, Niagara.	Mr. Fields, Westchester.
Mr. McKinstry, Chautauqua.	Mr. T. A. Sullivan, Erie.
Mr. Turner, Erie.	

Clerk, J. P. Brenan. Room, Senate 4.

On Contingent Expenses :

Mr. Lyon, chairman, Broome.	Mr. J. I. Green, New York.
Mr. E. A. Brown, Herkimer.	Mr. Tekulsky, New York.
Mr. Whitmyer, Schenectady.	
Mr. Faber, Kings.	
Mr. Pashley, Kings.	

Clerk, Ray B. Smith. Room, Senate Room 4.

On Rules :

The President, chairman, New York.	Mr. Bowers, New York.
Mr. Root, New York.	Mr. Deyo, New York.
Mr. Acker, Steuben.	Mr. Griswold, Greene.
Mr. Davies, Oneida.	
Mr. McMillan, Erie.	

Clerk, E. A. Fay. Room, President's Room.

Select Committee on Civil Service :

Mr. Gilbert, chairman, Franklin.	Mr. McCurdy, New York.
Mr. Francis, Rensselaer.	Mr. Countryman, Albany.
Mr. Hedges, Rockland.	Mr. Bigelow, New York.
Mr. Hill, Erie.	Mr. Osborn, Putnam.
Mr. Foote, Monroe.	Mr. Putnam, Erie.
Mr. R. M. Johnston, Kings.	
Mr. Lincoln, Cattaraugus.	

Clerk, George B. Munn. Room, Court of Appeals Room.

Special Committee on Proposed Amendments :

Mr. E. R. Brown, chairman, Jefferson.	Mr. Bowers, New York.
Mr. McKinstry, Chautauqua.	
Mr. Church, Allegany.	
Mr. Kinkel, Kings.	

Clerk, C. A. de Gersdorf.

Special Committee on Forest Preservation :

Mr. McClure, chairman, New York.	Mr. Peabody, Columbia.
Mr. McIntyre, St. Lawrence.	Mr. C. B. McLaughlin, Essex.
	Mr. Mereness, Lewis.

Clerk, George B. Munn. Room, Ways and Means Room.

Special Committee on Land Titles :

Mr. A. H. Green, chairman, New York.	Mr. Tibbetts, Tompkins.
Mr. Arnold, Dutchess.	Mr. Wellington, Madison.
	Mr. Deyo, New York.



RULES.

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## CHAPTER I.

## POWERS AND DUTIES OF THE PRESIDENT AND VICE-PRESIDENTS.

Rule 1. The President shall take the chair each day at the hour to which the Convention shall have adjourned. He shall call to order, and, except in the absence of a quorum, shall proceed to business in the manner prescribed by these rules.

Rule 2. He shall possess the powers and perform the duties herein prescribed, viz.:

1. He shall preserve order and decorum, and, in debate, shall prevent personal reflections, and confine members to the question under discussion. When two or more members rise at the same time, he shall name the one entitled to the floor.

2. He shall decide all questions of order, subject to appeal to the Convention. On every appeal he shall have the right, in his place, to assign his reason for his decision. In case of such appeal no member shall speak more than once.

3. He shall appoint all committees, except where the Convention shall otherwise order.

4. He may substitute any member to perform the duties of the chair during the absence or inability of both vice-presidents, but for no longer period than two consecutive legislative days, except by special consent of the Convention.

5. When the Convention shall be ready to go into Committee of the Whole, he shall name a chairman to preside therein, subject to right of committee to elect its own chairman.

6. He shall certify the passage of all amendments by the Convention, with the date thereof.

7. He shall designate the persons who shall act as reporters for the public press, not exceeding thirty in number; but no reporter shall be admitted to the floor who is not an authorized representative of a daily paper. Such reporters so appointed, shall be entitled to such seats as the President shall designate, and shall have the right to pass to and fro from such seats in entering or leaving the Assembly Chamber. No reporter shall appear before any of the committees in advocacy of, or in opposition to, anything under consideration before such committees. A violation of this rule will be sufficient cause for the removal of such reporter. Removal for this cause shall be vested in the President.

8. He shall not be required to vote in ordinary proceedings, except where his vote would be decisive. In case of a tie vote the question shall be lost. He shall have general control, except as provided by rule or law, of the Assembly Chamber and of the corridors and passages in that part of the Capitol assigned to the use of the Convention. In case of any disturbance or disorderly conduct in the galleries, corridors or passages, he shall have the power to order the same to be cleared, and may cause any person guilty of such disturbance or disorderly conduct to be brought before the bar of the Convention. In all such cases the members present may take such measures as they shall deem necessary to prevent a repetition of such misconduct, either by the infliction of censure or pecuniary penalty, as they may deem best, on the parties thus offending.

9. He shall also be *ex-officio* member and chairman of the Committee on Rules.

10. In the absence of the President, or his inability to preside, his duties shall devolve upon the First Vice-President, or, if he also be absent, upon the Second Vice-President.

## CHAPTER II.

### ORDER OF BUSINESS.

Rule 3. The first business of each day's session shall be the reading of the Journal of the preceding day, and the correction of any errors that may be found to exist therein. Immediately thereafter, except on days and at times set apart for the consideration of special orders, the order of business shall be as follows:

1. Presentation of memorials. Under which head shall be included petitions, remonstrances and communications from individuals, and from public bodies.

2. Communications from the Governor and other State officers. Under this head shall be embraced also communications from public officers and from corporations in response to calls for information.

3. Notices, motions and resolutions, to be called for by districts, numerically.

4. Propositions for constitutional amendment, by districts, in numerical order.

5. Reports of standing committees in the order stated in rule 15.

6. Reports of select committees.

7. Third reading of proposed constitutional amendments.

8. Unfinished business of general orders.

9. Special orders.

10. General orders.

Reports from the Committee on Revision and Engrossment may be received under any order of business.

### CHAPTER III.

#### RIGHTS AND DUTIES OF MEMBERS.

Rule 4. Petitions, memorials, remonstrances and any other papers addressed to the Convention shall be presented by the President, or by any member in his place, read by their titles, unless otherwise ordered, and referred to the proper committee.

Rule 5. Every member presenting a paper shall indorse the same; if a petition, memorial, remonstrance or communication in answer to a call for information, with a concise statement of its subject, and his name; if a notice or resolution, with his name; if a proposition for constitutional amendment, with a statement of its title and his name; if a proposition of any other kind for the consideration of the Convention, with a statement of its subject, the proposer's name, and the reference, if any, desired. A report of a committee must be indorsed with a statement of such report, together with the name of the committee making the same, and shall be signed by the chairman. A report by a minority of any committee shall be signed by the members rendering the same.

Rule 6. Every member who shall be within the bar of the Convention, when a question is stated from the chair, shall vote thereon unless he be excused by the Convention, or unless he be directly interested in the question; nor shall the roll of absentees be more than once called. The bar of the Convention shall be deemed to include the body of the Convention chamber.

Rule 7. Any member requesting to be excused from voting may make, when his name is called, a brief statement of the reasons for making such request, not exceeding three minutes in time, and the Convention, without debate, shall decide if it will grant such request; or any member may explain his vote, for not exceeding three minutes; but nothing in this rule contained shall abridge the right of any member to record his vote on any question previous to the announcement of the result.

### CHAPTER IV.

#### ORDER AND DECORUM.

Rule 8. No member rising to debate, to give a notice, make a motion, or present a paper of any kind, shall proceed until he shall have addressed the President and been recognized by him as entitled to the floor. While the President is putting a question or a count is being had, no member shall speak or leave his place; and while

a member is speaking no member shall entertain any private discourse or pass between him and the Chair.

Rule 9. When a motion to adjourn, or for recess, shall be carried, no member or officer shall leave his place till the adjournment or recess shall be declared by the President.

Rule 10. No persons, except members of the Convention and officers thereof, shall be permitted within the Secretary's desk, or the rooms set apart for the use of the Secretary, during the session of the Convention, and no member or other person shall visit or remain by the Secretary's table while the yeas and nays are being called, except officers of the Convention in the discharge of their duties.

## CHAPTER V.

### ORDER AND DEBATE.

Rule 11. No member shall speak more than once on the same question until every member desiring to speak on such question shall have spoken; nor more than twice on any question without leave of the Convention.

Rule 12. If any member, in speaking, transgress the rules of the Convention, the President shall, or any member may, call to order, in which case the member so called to order shall immediately sit down, and shall not rise unless to explain or proceed in order.

Rule 13. All questions relating to the priority of one question or subject-matter over another, under the same order of business, the postponement of any special order, or the suspension of any rule, shall be decided without debate.

Rule 14. All questions of order, as they shall occur, with the decisions thereon, shall be entered in the Journal, and at the close of the day's session a statement of all such questions and decisions shall be printed at the close of and as an appendix to the Journal.

## CHAPTER VI.

### COMMITTEES AND THEIR DUTIES.

Rule 15. The President shall appoint the following standing committees to report upon the subjects named and such others as may be referred to them, viz.:

1. On the preamble and bill of rights, to consist of eleven members.
2. On the Legislature, its organization, and the number, apportionment, election, tenure of office and compensation of its members, to consist of seventeen members.

3. On the powers and duties of the Legislature, except as to matters otherwise referred, to consist of seventeen members.

4. On the right of suffrage and the qualifications to hold office, to consist of seventeen members.

5. On the Governor and other State officers, their election or appointment, tenure of office, compensation, powers and duties, except as otherwise referred, to consist of seventeen members.

6. On the judiciary, to consist of seventeen members.

7. On the State finances, revenues, expenditures and taxation, and restrictions on the powers of the Legislature in respect thereto, and to public indebtedness, to consist of seventeen members.

8. On cities, their organization, government and powers, to consist of seventeen members.

9. On canals, to consist of eleven members.

10. On railroads, transportation, and electrical transmission, to consist of seventeen members.

11. On counties, towns and villages, their organization, government and powers, to consist of seventeen members.

12. On county, town and village officers, other than judicial, their election or appointment, tenure of office, compensation, powers and duties, to consist of seventeen members.

13. On State prisons and penitentiaries, and the prevention and punishment of crime to consist of eleven members.

14. On corporations and institutions, not otherwise herein specified, to consist of seventeen members.

15. On currency, banking and insurance, to consist of eleven members.

16. On the militia and military affairs, to consist of seven members.

17. On education and the funds relating thereto, to consist of seventeen members.

18. On charities and charitable institutions, to consist of seventeen members.

19. On industrial interests, except those already referred, to consist of seventeen members.

20. On the salt springs of the State, to consist of seven members.

21. On the relations of the State to the Indians residing therein, to consist of seven members.

22. On future amendments and revisions of the Constitution, to consist of seven members.

23. Revision and engrossment, to consist of seven members.

24. Privileges and elections, to consist of eleven members.

25. Printing, to consist of seven members.
26. Contingent expenses, to consist of seven members.
27. Rules, to consist of seven members, and the President.

Rule 16. The several committees shall consider and report, without unnecessary delay, upon the respective matters referred to them by the Convention.

Rule 17. The Committee on Revision and Engrossment shall examine and correct the constitutional amendments which are referred to it, for the purpose of avoiding inaccuracies, repetitions and inconsistencies. It shall also carefully examine in the order in which they shall be directed by the Convention to be engrossed for a third reading, all constitutional amendments so engrossed, and see that the same are correctly engrossed, and shall immediately report the same in like order to the Convention before they are read the third time.

Rule 18. It shall be the duty of the Committee on Printing to examine and report on all questions of printing referred to them; to examine from time to time, and ascertain whether the prices charged for printing, and the quantities and qualities furnished, are in conformity to the orders of the Convention and to the conditions fixed by it; to ascertain and report the number of copies to be printed, and how distributed; and to report to the Convention from time to time, any measures they may deem useful for the economical and proper management of the Convention printing.

Rule 19. It shall be the duty of the Committee on Contingent Expenses to inquire into the expenditures of the Convention, and whether the same are being or have been made in conformity to law and the orders of the Convention, and whether proper vouchers exist for the same, and whether the funds provided for the purpose are economically applied, and to report, from time to time, such regulations as may conduce to economy and secure the faithful disbursement of the moneys appropriated by law.

## CHAPTER VII.

### GENERAL ORDERS AND SPECIAL ORDERS.

Rule 20. The matters referred to the Committee of the Whole Convention shall constitute the general orders, and their titles shall be recorded in a calendar kept for that purpose by the Secretary, in the order in which they shall be severally referred.

Rule 21. The business of the general orders shall be taken up in the following manner, viz.: The Secretary shall announce the title of each proposed amendment or other matter, as it shall be

reached in its order, whereupon it shall be taken up on the call of any member, without the putting of a question therefor, but if not so moved, it shall lose its precedence for the day. And whenever three proposed amendments or other matters have been thus moved the Convention shall go into Committee of the Whole upon them without further order.

Rule 22. Tuesday and Thursday of each week shall be set apart especially for the consideration of the general orders; but they may be considered on any other day when reached in their order.

Rule 23. Each member shall be furnished daily with a printed list of the general orders, which shall be kept on his files by the Sergeant-at-Arms, in the same manner as other printed documents.

Rule 24. Any matter may be made a special order for any particular day, by the acceptance of the report of the Committee on Rules, or by a two-thirds vote, or by unanimous consent.

## CHAPTER VIII.

### COMMITTEE OF THE WHOLE.

Rule 25. Any matter may be committed to the Committee of the Whole upon the report of a standing or select committee, or by unanimous consent at any time. Any committee may be discharged from the further consideration of any matter referred to it, and such matter may then be referred to the Committee of the Whole, by a vote of the Convention. The same rules shall be observed in the Committee of the Whole as in the Convention, so far as the same are applicable, except that the previous question shall not apply, nor the yeas and nays be taken; nor a limit be made as to the number of times of speaking.

Rule 26. A motion to "rise and report progress" shall be in order at any stage, and shall be decided without debate. A motion to rise and report is not in order until each section and the title have been considered, unless the limit of time has expired.

Rule 27. Proposed constitutional amendments and other matters shall be considered in Committee of the Whole in the following manner, viz.: They shall be first read through, if the committee so direct; otherwise they shall be read and considered by sections. When the limit of time has expired, the amendments which have been proposed and not previously acted upon shall be voted upon in their order without further debate. The proposed constitutional amendment as amended shall then be voted upon without debate, and the committee shall then rise and report in accordance with the action which it has taken.

If the committee shall have adopted any proposed constitutional amendment, the same shall be reported complete with any amendments made in the committee incorporated in their proper places.

Rule 28. If at any time, when in Committee of the Whole, it be ascertained that there is no quorum, the chairman shall immediately report the fact to the President, who then takes the chair for the purpose of securing a quorum, and when that is obtained the chairman resumes his duties.

Rule 29. Should the committee not have completed the business before it rises, the chairman will report progress and ask leave to sit again.

## CHAPTER IX.

### PROPOSED AMENDMENTS TO THE CONSTITUTION.

Rule 30. No proposition for constitutional amendment shall be introduced in the Convention except in one of the following modes, viz.:

1. Under the order of introduction of propositions for constitutional amendment by districts, in numerical order.
2. By report of a committee.

Rule 31. The title of each proposition for constitutional amendment introduced shall state concisely its subject-matter.

Rule 32. All propositions for constitutional amendment, after their second reading, which shall be by title, shall be referred to a standing or select committee, to consider and report thereon, and shall be immediately printed and placed on the files of each member. All proposed constitutional amendments reported shall, if the report be agreed to, be committed to the Committee of the Whole and immediately printed. When a committee has reported that no amendment should be made to the provisions of the existing Constitution relating to any specified subject, and such report is agreed to, all propositions for constitutional amendment relating to that subject which have been referred to that committee shall be considered as rejected. All constitutional amendments proposed by a minority report from any committee shall be printed and placed on the files of the members of the Convention.

Rule 33. Proposed constitutional amendments reported by the Committee of the Whole shall be subject to debate before the question to agree with the committee in their report is put.

Rule 34. No proposed constitutional amendment shall be ordered to a third reading until it shall have been considered in Committee of the Whole.



Rule 35. No proposed constitutional amendment shall be put upon its third reading until it shall have been reported by the Committee on Revision and Engrossment as correctly revised and engrossed, unless by unanimous consent. Nor shall any proposed constitutional amendment be read the third time, unless it shall have been once printed.

Rule 36. Every proposed constitutional amendment shall receive three separate readings, previous to its final passage, and the third reading shall be on a day subsequent to that on which the proposed constitutional amendment passed in Committee of the Whole.

Rule 37. The third reading of proposed constitutional amendments shall take place in the order in which they have been ordered to a third reading, unless the Convention, by a vote of two-thirds of the members present, direct otherwise, or the proposed constitutional amendment to be read is laid on the table. And the question on the final passage of every proposed constitutional amendment shall be taken immediately after such third reading, and without debate, but the vote on the final passage of every proposed amendment, revision or addition to the Constitution shall be taken by ayes and nays, which shall be entered on the Journal.

Rule 38. In all cases where unanimous consent is asked for advancing a proposed constitutional amendment out of its order, it shall be the duty of the President to plainly announce such request in full twice.

Rule 39. On the third reading of a proposed constitutional amendment, after the reading of the title, and before the reading of the text, the proposed constitutional amendment shall be open one hour, if required, for debate on its merits, before the previous question shall be ordered; but no member shall speak more than five minutes or more than once; the vote, however, may be taken at any time when the debate is closed.

Rule 40. On the third reading of the proposed constitutional amendment, no amendment thereto shall be in order, except to fill blanks without unanimous consent.

Rule 41. A motion may be made during the third reading of any proposed constitutional amendment to recommit it, and such motion shall not be debatable.

Rule 42. A register shall be kept by the Secretary of all proposed constitutional amendments introduced in the Convention, in which shall be recorded, under appropriate heads, the progress of such proposed constitutional amendments from the date of their introduction to the time of their final disposition.

Rule 43. In all cases where a proposed constitutional amendment, order, motion or resolution shall be entered on the Journal, the name of the member introducing or moving the same shall also be entered on the Journal.

## CHAPTER X.

### MOTIONS AND THEIR PRECEDENCE.

Rule 44. When a question is under consideration, the following motions only shall be received ; which motions shall have precedence in the order stated, viz. :

Motions to, or for :

- |                                                         |   |                                       |
|---------------------------------------------------------|---|---------------------------------------|
| 1. Adjourn for the day.                                 | } | Not amendable or debatable.           |
| 2. Recess.                                              |   |                                       |
| 3. Call of the Convention.                              |   |                                       |
| 4. Previous question.                                   |   |                                       |
| 5. Lay on the table.                                    |   |                                       |
| 6. Postpone indefinitely, not amendable, but debatable. |   |                                       |
| 7. Postpone to a certain day.                           | } | Preclude debates on<br>main question. |
| 8. Go into Committee of the Whole.                      |   |                                       |
| 9. Commit to Committee of the Whole.                    |   |                                       |
| 10. Commit to a standing committee.                     |   |                                       |
| 11. Commit to a select committee.                       |   |                                       |
| 12. Amend.                                              |   |                                       |

Rule 45. Every motion or resolution shall be stated by the President or read by the Secretary before debate, and again, if requested by any member, immediately before putting the question ; and every motion, except those specified in subdivisions one to eleven, inclusive, of rule 44, shall be reduced to writing if the President or any member request it.

Rule 46. After a motion shall be stated by the President, it shall be deemed in the possession of the Convention, but may be withdrawn at any time before it shall be decided or amended.

Rule 47. The motion to adjourn, to take a recess, and to adjourn for a longer period than one day, shall always be in order ; but the latter motion shall not preclude debate.

Rule 48. A motion to reconsider any vote must be made on the same day on which the vote proposed to be reconsidered was taken, or on the legislative day next succeeding, and by a member who voted in the majority, except to reconsider a vote on the final passage of a proposed constitutional amendment, which shall be

privileged to any member. Such motion may be made under any order of business, but shall be considered only under the order of business in which the vote proposed to be reconsidered occurred. When a motion for reconsideration is decided, that decision shall not be reconsidered, and no question shall be twice reconsidered; nor shall any vote be reconsidered upon either of the following motions:

To adjourn.

To lay on the table.

To take from the table; or

For the previous question.

Rule 49. No amendment to a motion shall be received while another is pending, unless it be an amendment to the amendment and germane to the subject.

## CHAPTER XI.

### OF RESOLUTIONS.

Rule 50. The following classes of resolutions shall lie over one day for consideration, after which they may be called up, as of course, under their appropriate order of business:

1. Resolutions giving rise to debate, except such as shall relate to the disposition of business immediately before the Convention, to the business of the day on which they may be offered or to adjournments or recesses, shall lie over one day for consideration, after which they may be called up, as of course, under their appropriate order of business.

2. Resolutions containing calls for information from any of the executive departments, from State, county or municipal officers, or from any corporate bodies, shall be referred to the appropriate committee. Such committee shall report thereon within three legislative days.

Rule 51. All resolutions for the printing of an extra number of documents shall be referred, as of course, to the standing Committee on Printing, for their report thereon before final action by the Convention.

Rule 52. All resolutions authorizing or contemplating expenditures for the purposes of the Convention shall be referred to the standing Committee on Contingent Expenses, for their report thereon before final action by the Convention.

## CHAPTER XII.

## THE PREVIOUS QUESTION.

Rule 53. The "previous question" shall be put as follows: "Shall the main question now be put?" and until it is decided, shall preclude all amendments or debate. When, on taking the previous question, the Convention shall decide that the main question shall not now be put, the main question shall be considered as still remaining under debate. The "main question" shall be on the passage of the proposed amendment to the Constitution, resolution or other matter under consideration, but when amendments thereto are pending, the question shall first be taken upon such amendments in their order, and when adopted in Committee of the Whole, and not acted on in the Convention, the question shall be taken upon such amendments in like order.

## CHAPTER XIII.

THE CONVENTION CHAMBER AND PRIVILEGES OF ADMISSION  
TO THE FLOOR.

Rule 54. The following classes of persons, besides officers and members of the Convention, shall be entitled to admission to the floor of the Convention during the session thereof, viz.:

1. Governor, Lieutenant-Governor, and ex-Governors of the State.
2. Judges of the Court of Appeals and of the Supreme Court.
3. The members of the Senate and Assembly and ex-Speakers.
4. The State officers, deputies and commissioners.
5. The Regents of the University.
6. United States Senators and Congressmen.
7. The Capitol Commissioners.
8. Persons in the exercise of an official duty directly connected with the business of the Convention.
9. The reporters for the press, as provided by subdivision 7 of rule 2.

No other person shall be admitted to the floor during the session, except upon the permission of the President or by vote of the Convention; and persons so admitted shall be allowed to occupy places only in the seats in the rear of the Assembly Chamber. All permits granted by the President may be revoked by him at pleasure, or upon the order of the Convention. No person shall be entitled to the privileges of the floor of the Convention as a legislative reporter of a newspaper who is interested in pending or contemplated consti-

tutional revision, or who is employed by, or receives compensation from, any corporation, except a newspaper, news or press association. The doors of the Convention shall be kept open to the public during all its sessions.

## CHAPTER XIV.

### GENERAL RULES.

Rule 55. Equivalent motions, resolutions or amendments thereto, shall not be entertained. If any question contains several distinct propositions, it shall be divided by the Chair at the request of any member, but a motion to "strike out and insert" shall be indivisible.

Rule 56. All proposed action touching the rules and orders of business shall be referred, as of course, to the Committee on Rules; such committee may sit during the session of the Convention without special leave, and report at any time on rules or order of business so referred to them. It will be in order to call up for consideration at any time a report from the Committee on Rules. Any member may object to its consideration until the next legislative day, and, if sustained by twenty-four other members, the consideration shall be so postponed, but only once. Pending the final consideration thereof, but one motion, except by unanimous consent, that the Convention adjourn, may be entertained, and no other dilatory motion shall be entertained until such report is fully disposed of. A motion to suspend the rules shall in all cases state specifically the object of the suspension, and every case of suspension of a rule under such notice and motion shall be held to apply only to the object specified therein. Provided that when ordered so to do by the Convention a standing committee shall make a report on a constitutional amendment or other subject, the Committee on Rules shall report a rule limiting the time for debate; and upon such report no member shall speak more than once, nor more than five minutes. Such report shall stand as the time limited for debate on the subject-matter referred to in such rule, and the previous question or other motion to close debate shall not be in order until the expiration of the time so allotted, or the debate has been closed; the time thus allotted for debate shall be equally divided between those in favor and those opposed to the subject-matter under consideration. All questions or motions authorized by this rule shall be decided at once without delay or debate, except as herein expressly allowed.

Rule 57. The yeas and nays may be taken on any question whenever so required by any fifteen members (unless a division by yeas and nays be already pending), and when so taken shall be entered on the Journal.

Rule 58. When the Convention shall be equally divided on any question, including the President's vote, the question shall be deemed to be lost.

Rule 59. In considering the report of the Committee on Revision and Engrossment, each article shall be open to amendment germane to such changes as may have been reported by the committee, without previous notice, but no one shall speak more than five minutes, or more than once, on any proposition to amend.

Rule 60. When a blank is to be filled and different sums or times shall be proposed, the question shall be first taken on the highest sum and the longest time.

Rule 61. A majority of the Convention shall constitute a quorum. In all cases of the absence of members during its sessions, the members present shall take such measures as they shall deem necessary to secure the presence of absentees, and may inflict such censure or pecuniary penalty as they may deem just on those who, on being called on for that purpose, shall not render sufficient excuse for their absence. No constitutional amendment shall be adopted unless by the assent of a majority of all the members elected to the Convention.

Rule 62. For the purpose of securing the attendance of members, a call of the Convention may be made, but such call shall not be in order after the main question has been ordered, nor after the voting on any question has commenced, nor after the third reading of an amendment has been completed.

Rule 63. When less than a quorum vote on any subject under consideration by the Convention, it shall be in order, on motion, to close the bar of the Convention, whereupon the roll of members shall be called by the Secretary, and if it is ascertained that a quorum is present, either by answering to their names or by their presence in the Convention, the yeas and nays shall again be ordered by the President, and if any member present refuses to vote, such refusal shall be deemed a contempt, and any member or members so offending shall be cited before the Committee on Privileges and Elections, which, after inquiry, shall report to the Convention for such action as the facts shall seem to warrant, and, unless purged, the Convention may order the Sergeant-at-Arms to remove said member or members without the bar of the Convention, and all privileges of membership shall be refused the person or persons so offending until the contempt be duly purged.

Rule 64. Whenever any person shall be brought before the bar of the Convention for adjudged breach of its privileges, no debate

shall be in order, but the President shall proceed to execute the judgment of the Convention without delay or debate.

Rule 65. It shall be the duty of the Secretary to keep the Journal of each day's proceedings, which shall be printed and laid on the table of members on the morning after its approval. In addition to his other duties, he shall prepare and supervise the printing of the calendars of the orders of the day and cause them to be placed on the files before the beginning of each day's session. All appointments of officers and employes shall be entered on the Journal of the Convention, with the date of appointment.

Rule 66. It shall be the duty of the stenographer of the Convention to be present at every session of the Convention. He shall take stenographic notes of the debates in the Convention and in Committee of the Whole and shall, at each day's session of the Convention, furnish a copy of the debates of the day before, written out in long-hand, and file the same with the Secretary, who shall keep the same in his office, and the same shall at all times be open to the inspection of delegates.

Rule 67. At a reasonable time, to be determined by the Convention, and at least five days before final adjournment, the Committee on Revision and Engrossment shall be instructed to accurately enroll and engross the present State Constitution, with all amendments thereto properly inserted, or the proposed new Constitution; and the same shall be reported by said committee to the Convention, read through therein, and submitted to a final vote prior to its final adjournment. When an article of the Constitution is amended, or a new article substituted or added, such amended article, or new article, shall be enrolled and engrossed entire in its proper place in the Constitution.

## CHAPTER XV.

### MISCELLANEOUS PROVISIONS.

Rule 68. The Sergeant-at-Arms shall, under the direction of the Committee on Printing, receive from the printer all matter printed for the use of the Convention, and keep a record of the time of the reception of each document, and the number of copies received, and cause a copy of each to be placed on the desk of each member immediately after their reception by him. Subject to the direction of the President, he shall enforce the rules of the Convention.

Rule 69. Separate files of the daily Journal, reports of committees and of all documents ordered to be printed shall be prepared and kept by the Sergeant-at-Arms, and one copy shall be

placed upon the desk of each member of the Convention and of the Secretary.

Rule 70. There shall be printed, as of course, and without any special order, 1,000 copies of the Journal and of all reports of committees on the subject of Constitutional revision.

Rule 71. Six hundred copies of the Journal and six hundred copies of the reports as printed shall be bound and distributed as follows, viz.: To each member of the Convention, two copies; State Library, five copies; the library of the Senate, five copies; the library of the Assembly, five copies; the office of each county clerk, one copy; and the remaining copies to such libraries and other institutions as shall be designated by the President or by the Convention.

Rule 72. The officers of the Convention appointed by the President shall perform such duties as he may prescribe, and for any breach of duty any such officer may be removed and his successor appointed by the President. The officers of the Convention appointed by the Secretary shall perform such duties as he may prescribe, and for any breach of duty any such officers may be removed and his successor be appointed by the Secretary.

Rule 73. After the fifteenth day of July, no further propositions for constitutional amendment shall be printed or referred, as of course, under rule 32, but all such propositions shall be referred without printing, to a select committee of five, to be appointed by the President, for examination and comparison with proposed constitutional amendments already introduced and referred.

If any such proposition shall be found to relate to a subject already under consideration by a standing committee the select committee shall transmit the same, without printing, directly to such standing committee for its information. Upon all other propositions so referred to such select committee it shall report whether in its opinion the same ought to be printed, and referred under rule 32. On the first day of August the call for proposed constitutional amendments, by districts, under rule 3, shall be discontinued, and thereafter no proposed constitutional amendment shall be introduced, except on the report of a standing or select committee.

Rule 74. After the 15th day of July, 1894, no member of this Convention shall receive pay for any day upon which the Convention is in session and he is absent without leave. After the same date no member shall receive pay for any day of any calendar week during



which he is absent without leave from all the sessions of the Convention.

Rule 75. Whenever a committee shall have acted adversely on any proposed amendment to the Constitution, such committee need not report such adverse determination, unless requested, in writing, by the member introducing such amendment, so to do, and it was determined in the affirmative.

Rule 76. A minority report may be made at any time before the subject on which report has been made by a standing or select committee, has been finally disposed of by the Convention.

Rule 77. Hereafter the Convention may dispense with the reading of the Journal, and that amendments thereto may be made on the legislative day following that on which the printed Journal is placed on the desks of the members.

**DOCUMENT NO. 61.**

[COMMUNICATION NO. 24.]

(In Response to Resolution No. 158, Vol. 1, Page 1149; Vol. 2, Page 93.)

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Communication from Superintendent of Banks, Giving Statement of the Condition of the Trust Companies of New York State.

**STATE OF NEW YORK:**

BANKING DEPARTMENT,

ALBANY, *August 21, 1894.*

*To the Secretary of the Constitutional Convention of the State of New York, Albany, N. Y. (Capitol):*

GENTLEMEN.—In accordance with your request of the third inst., I send you herewith, the printed statement of the trust companies of the State, as compiled from their reports to this department, for the year ending June 30, 1894.

Very truly yours,

CHARLES M. PRESTON,

*Superintendent.*

*Statement of the Condition of the Trust Companies of the State of  
New York on the Morning of July 1, 1894.*

**RESOURCES.**

NAMES.	Bonds and mortgages.	Stock investments.	Loaned on collaterals.
Atlantic Trust Company, New York city.....	\$246,500 00	\$160,777 50	\$1,606,204 07
Binghamton Trust Company Binghamton.....	415,571 02	718,330 00	232,665 43
Brooklyn Trust Company, Brooklyn.....	680,750 00	2,759,200 00	6,258,331 00
Buffalo Loan, Trust and Safe Deposit Com- pany, Buffalo . . . . .	476,697 28	110,000 00	537,959 84
Central Trust Company, New York city.....	159,226 39	4,804,790 66	17,731,388 62
Columbus Trust Company, Newburgh.....	85,800 00	21,100 00	13,314 54
Continental Trust Company, New York city..	206,800 00	639,845 16	2,035,141 06
Delaware Loan and Trust Company, Walton..	98,198 44	22,700 00	10,000 00
Farmers' Loan and Trust Company, New York city . . . . .	403,800 00	8,009,412 00	9,727,311 64
Fidelity Trust and Guaranty Company, Buffalo,	621,119 00	79,524 74	666,042 51
Franklin Trust Company, Brooklyn.....	539,000 00	2,306,985 80	1,863,734 91
Hamilton Trust Company Brooklyn.....	490,365 00	622,300 00	1,968,299 50
Holland Trust Company New York city.....	.....	755,420 95	513,556 91
Ithaca Trust Company, Ithaca.....	102,158 65	237,337 28	34,010 00
Kings County Trust Company, Brooklyn.....	792,790 50	891,690 00	2,358,754 06
Knickerbocker Trust Company, New York city,	127,500 00	2,231,798 59	2,392,080 49
Long Island Loan and Trust Co., Brooklyn..	422,121 48	1,271,760 00	1,173,220 00
Manhattan Trust Company, New York city..	44,000 00	2,197,516 81	1,168,911 60
Mercantile Trust Company, New York city...	345,469 07	4,287,936 31	14,900,784 36
Metropolitan Trust Company, New York city .	200,000 00	2,257,800 00	5,427,679 17
Nassau Trust Co. of the City of Brooklyn .	446,903 00	1,154,489 44	786,270 00
New York Guaranty and Indemnity Company, New York city . . . . .	116,286 37	4,139,077 20	5,347,941 96
New York Life Insurance and Trust Company, New York city.....	2,537,644 50	9,496,094 50	4,047,833 17
New York Security and Trust Company, New York city . . . . .	250,500 00	2,496,787 44	2,550,505 42
Orange County Trust and Safe Deposit Com- pany, Middletown . . . . .	76,872 00	190,218 65	168,849 50
People's Trust Company, Brooklyn.....	892,305 00	2,840,670 17	2,886,383 87
Real Estate Trust Company, New York city..	90,000 00	906,136 93	1,848,600 00
Rochester Trust and Safe Deposit Company, Rochester . . . . .	467,005 08	729,091 76	1,833,409 22
Security Trust Company of Rochester.....	119,500 00	116,400 00	424,140 00
The State Trust Company, New York city....	44,856 93	2,034,434 88	4,078,728 53
Title Guarantee and Trust Company, New York city . . . . .	2,051,899 86	551,500 00	157,727 00
Trust and Deposit Company of Onondaga, Syracuse . . . . .	90,368 56	390,862 50	422,161 34
Union Trust Company, New York city.....	722,200 00	3,937,530 00	13,870,754 30
Union Trust Company of Jamestown.....	149,120 65	19,400 00	30,192 07
United States Mortgage Company, New York city . . . . .	1,824,229 02	1,783,178 03	1,776,023 49
United States Transfer and Exchange Associa- tion, New York city.....	.....	285,905 00	24,090 27
United States Trust Company, New York city,	2,784,000 00	16,731,390 75	19,696,265 37
Washington Trust Company, New York city,	85,600 00	609,150 00	2,873,631 25
Totals . . . . .	\$19,208,157 80	\$83,098,272 05	\$136,442,896 46

*Statement of the Condition of the Trust Companies—(Continued).*

## RESOURCES.

NAMES.	Loaned on personal securities including bills purchased.	Due from banks.	Real estate.
Atlantic Trust Company, New York city.....	.....	.....	.....
Binghamton Trust Company, Binghamton.....	\$497,785 35	.....	\$10,071 37
Brooklyn Trust Company, Brooklyn.....	537,596 30	.....	175,000 00
Buffalo Loan, Trust and Safe Deposit Company, Buffalo . . . . .	.....	\$330 05	.....
Central Trust Company, New York city.....	402,000 00	.....	850,000 00
Columbus Trust Company, Newburgh.....	120,557 54	2,811 96	.....
Continental Trust Company, New York city....	158,415 28	99,315 61	.....
Delaware Loan and Trust Company, Walton....	114,070 18	2,933 59	.....
Farmers' Loan and Trust Company, N. Y. city,	1,620,000 00	.....	1,000,000 00
Fidelity Trust and Guaranty Company, Buffalo,	.....	.....	.....
Franklin Trust Company, Brooklyn.....	309,748 79	.....	485,698 33
Hamilton Trust Company, Brooklyn.....	57,550 00	.....	.....
Holland Trust Company, New York city.....	37,501 12	.....	67,186 60
Ithaca Trust Company, Ithaca.....	13,087 93	.....	.....
Kings County Trust Company, Brooklyn.....	609,672 25	.....	10,137 00
Knickerbocker Trust Co., N. Y. city.....	208,972 57	.....	.....
Long Island Loan and Trust Co., Brooklyn....	202,000 00	.....	110,000 00
Manhattan Trust Company, New York city.....	.....	.....	.....
Mercantile Trust Company, New York city....	1,224,628 24	.....	47,778 41
Metropolitan Trust Company, New York city..	.....	.....	550,000 00
Nassau Trust Co. of the City of Brooklyn.....	157,211 67	.....	.....
New York Guaranty and Indemnity Company, New York city.....	40,973 72	.....	101,629 69
New York Life Insurance and Trust Com- pany, New York city.....	7,075,887 40	.....	485,000 00
New York Security and Trust Company, New York city . . . . .	1,020,993 66	.....	.....
Orange County Trust and Safe Deposit Com- pany, Middletown . . . . .	53,278 52	11,668 21	31,827 76
People's Trust Company, Brooklyn.....	269,290 55	.....	60,000 00
Real Estate Trust Company, New York city....	9,232 92	.....	.....
Rochester Trust and Safe Deposit Company, Rochester . . . . .	.....	.....	160,000 00
Security Trust Company of Rochester.....	6,884 55	100,000 00	100,000 00
The State Trust Company, New York city.....	.....	.....	97,350 82
Title Guarantee and Trust Co., New York city,	.....	.....	.....
Trust and Deposit Co. of Onondaga, Syracuse,	83,120 83	.....	5,260 90
Union Trust Company, New York city.....	.....	.....	1,900,000 00
Union Trust Company of Jamestown.....	14,416 31	97 38	.....
United States Mortgage Company, N. Y. city..	301,341 67	.....	61,250 00
United States Transfer and Exchange Associa- tion, New York city . . . . .	.....	.....	.....
United States Trust Company, N. Y. city.....	8,283,110 75	.....	1,000,000 00
Washington Trust Company, N. Y. city.....	56,030 00	.....	.....
Totals . . . . .	\$22,485,358 10	\$217,156 80	\$7,308,190 88

*Statement of the Condition of the Trust Companies—(Continued).*

## RESOURCES.

NAMES.	Cash on deposit in banks or other moneyed institutions.	Cash on hand.	Other assets.	Total Resources.
Atlantic Trust Co., N. Y. city..	\$657,028 77 .	\$209 21	\$60,013 59	\$6,030,731 14
Binghamton Trust Co., Binghamton . . . . .	225,716 85	52,979 54	93,134 69	2,246,254 25
Brooklyn Trust Co., Brooklyn..	1,625,369 74	89,777 35	89,760 40	12,215,784 79
Buffalo Loan, Trust and Safe Deposit Company, Buffalo.....	200,605 55	57,346 08	35,269 32	1,418,208 12
Central Trust Co., N. Y. city..	4,480,090 88	2,170 94	305,915 22	28,735,582 51
Columbus Trust Co., Newburgh,	10,463 64	10,596 29	4,117 99	268,761 96
Continental Trust Company, New York city . . . . .	543,379 20	7,464 30	23,952 52	3,714,313 13
Delaware Loan and Trust Company, Walton . . . . .	12,528 30	13,531 52	20,514 85	294,476 88
Farmers' Loan and Trust Company, New York city.....	10,343,266 57	2,003,211 00	469,112 81	33,576,114 02
Fidelity Trust and Guaranty Company, Buffalo . . . . .	663,505 04	17,299 44	15,158 21	2,062,648 94
Franklin Trust Co., Brooklyn..	1,095,757 27	17,607 91	48,588 54	6,667,121 55
Hamilton Trust Co., Brooklyn..	424,389 42	23,155 25	40,061 34	3,626,120 51
Holland Trust Co., N. Y. city..	43,282 34	5,490 59	111,405 41	1,533,843 92
Ithaca Trust Company, Ithaca..	29,109 17	22,147 36	14,722 17	452,472 56
Kings County Trust Company, Brooklyn . . . . .	537,962 58	11,688 62	165,823 77	5,378,527 77
Knickerbocker Trust Company, New York city.....	1,544,282 79	76,013 73	86,849 00	6,667,497 17
Long Island Loan and Trust Company, Brooklyn . . . . .	341,600 27	27,251 38	29,913 97	3,577,887 10
Manhattan Trust Company, New York city . . . . .	2,807,727 61	150,000 00	77,313 95	6,445,471 97
Mercantile Trust Company, New York city . . . . .	4,624,970 38	20,048 05	938,678 03	26,389,992 83
Metropolitan Trust Company, New York city . . . . .	491,762 94	13,711 81	73,123 42	9,014,077 34
Nassua Trust Company of the City of Brooklyn.....	413,499 06	11,413 02	15,081 82	2,984,868 01
New York Guaranty and Indemnity Company, N. Y. city,	3,533,447 62	9,025 21	45,232 32	13,333,614 16
New York Life Insurance and Trust Company, N. Y. city....	133,841 30	3,700,000 00	562,770 25	28,039,071 12
New York Security and Trust Company . . . . .	3,513,035 32	12,992 79	53,544 42	9,898,359 05
Orange County Trust and Safe Deposit Co., Middletown.....	82,310 62	43,195 28	12,970 05	671,190 59
People's Trust Co., Brooklyn...	1,493,636 38	111,598 41	87,804 49	8,641,688 87
Real Estate Trust Company, New York city.....	544,009 29	5,508 17	10,905 27	3,414,392 58
Rochester Trust and Safe Deposit Company, Rochester.....	523,279 95	110,217 18	42,955 53	3,865,958 72
Security Trust Company of Rochester . . . . .	165,936 51	57,451 49	28,274 06	1,118,586 61
The State Trust Company, New York city . . . . .	1,885,321 60	13,288 91	59,714 93	8,213,696 60
Title Guarantee and Trust Company, New York city.....	365,159 93	4,507 51	545,890 98	3,676,685 28

*Statement of the Condition of the Trust Companies — (Continued).*

NAMES.	Cash on deposit in banks or other moneyed institutions.	Cash on hand.	Other assets.	Total Resources.
Trust and Deposit Company of Onondaga, Syracuse . . . . .	21,852 70	102,204 55	753,424 08	1,868,255 46
Union Trust Co., N. Y. city . . . . .	12,795,633 86	4,044,572 64	175,886 02	37,446,576 82
Union Trust Co. of Jamestown, . . . . .	22,114 50	13,833 17	8,444 88	257,618 96
United States Mortgage Company, New York city . . . . .	2,314,210 82	347 30	80,536 16	8,141,116 49
United States Transfer and Exchange Association, N. Y. city, . . . . .	1,227 74	.....	5,563 94	318,786 95
United States Trust Company, New York city . . . . .	4,499,060 08	.....	429,507 80	53,423,334 75
Washington Trust Co., New York city . . . . .	556,559 59	26,175 98	34,390 35	4,242,537 17
Totals . . . . .	\$63,566,933 98	\$10,888,032 04	\$5,656,328 56	\$349,871,326 67

## LIABILITIES.

NAMES.	Capital stock paid in, in cash.	Surplus fund.	Undivided profits.	Deposits in trust.
Atlantic Trust Co., N. Y. city..	\$500,000 00	\$500,000 00	\$175,794 23	\$65,813 68
Binghamton Trust Co., Binghamton . . . . .	400,000 00	.....	34,802 66	20,000 00
Brooklyn Trust Co., Brooklyn..	1,000,000 00	.....	1,494,517 64	663,727 24
Buffalo Loan, Trust and Safe Deposit Company, Buffalo . . . . .	200,000 00	.....	52,000 00	665,046 86
Central Trust Co., N. Y. city..	1,000,000 00	5,668,018 76	.....	7,324,996 73
Columbus Trust Co., Newburgh, . . . . .	100,000 00	20,000 00	2,525 59	.....
Continental Trust Company, New York city . . . . .	500,000 00	250,000 00	109,929 47	873,332 71
Delaware Loan and Trust Company, Walton . . . . .	100,000 00	10,000 00	1,788 44	.....
Farmers' Loan and Trust Company, New York city . . . . .	1,000,000 00	4,263,192 22	.....	28,190,048 43
Fidelity Trust and Guaranty Company, Buffalo . . . . .	500,000 00	18,556 45	.....	43,728 93
Franklin Trust Co. Buffalo . . . . .	1,000,000 00	800,219 97	.....	86,084 40
Hamilton Trust Co., Brooklyn..	500,000 00	300,000 00	51,288 89	95,998 92
Holland Trust Co., N. Y. city..	500,000 00	446,985 65	.....	.....
Ithaca Trust Company, Ithaca..	100,000 00	.....	18,510 85	918 20
Kings County Trust Company, Brooklyn . . . . .	500,000 00	500,000 00	66,094 76	698,137 48
Knickerbocker Trust Company, New York city . . . . .	750,000 00	.....	340,650 81	1,484,662 09
Long Island Loan and Trust Company, Brooklyn . . . . .	500,000 00	.....	309,219 50	96,499 34
Manhattan Trust Company, New York city . . . . .	1,000,000 00	200,000 00	27,808 54	933,075 96
Mercantile Trust Company, New York city . . . . .	2,000,000 00	1,750,000 00	261,505 67	728,019 74
Metropolitan Trust Co., New York city . . . . .	1,000,000 00	1,033,279 97	.....	.....
Nassau Trust Company of the City of Brooklyn . . . . .	500,000 00	.....	192,106 32	2,284,211 83

*Statement of the Condition of the Trust Companies — (Continued).*

NAMES.	Capital stock paid in, in cash.	Surplus fund.	Undivided profits.	Deposits in trust.
New York Guaranty and Indemnity Co., N. Y. city.....	2,000,000 00	1,000,000 00	552,412 76	1,830,739 73
New York Life Insurance and Trust Company, N. Y. city....	1,000,000 00	2,394,755 99	28,379 23	23,087,261 85
New York Security and Trust Company, New York city.....	1,000,000 00	1,000,000 00	56,162 54	7,809,330 64
Orange County Trust and Safe Deposit Company, Middletown,	100,000 00	25,000 00	14,584 27	516,349 50
People's Trust Co., Brooklyn....	1,000,000 00	850,000 00	114,955 90	59,963 45
Real Estate Trust Company, New York city . . . . .	500,000 00	250,000 00	48,462 37	2,615,930 21
Rochester Trust and Safe Deposit Company, Rochester.....	200,000 00	.....	255,022 69	129,175 66
Security Trust Co. of Rochester,	200,000 00	120,000 00	29,557 71	48,294 33
The State Trust Company, New York city . . . . .	1,000,000 00	500,000 00	356,316 05	6,346,094 27
Title Guarantee and Trust Company, New York city.....	2,000,000 00	968,235 84	.....	.....
Trust and Deposit Company of Onondaga, Syracuse . . . . .	100,000 00	.....	118,343 61	76,080 68
Union Trust Co., N. Y. city....	1,000,000 00	4,731,640 73	.....	.....
Union Trust Co. of Jamestown..	100,000 00	.....	2,685 35	93,356 73
United States Mortgage Company, New York city.....	2,000,000 00	600,000 00	105,574 19	80,248 41
United States Transfer and Exchange Association, N. Y. city,	200,000 00	8,861 95	.....	.....
United States Trust Company, New York city . . . . .	2,000,000 00	8,953,284 53	334,756 09	41,001,686 04
Washington Trust Co., New York city . . . . .	500,000 00	400,000 00	46,162 80	.....
Totals . . . . .	\$28,550,000 00	\$37,560,032 06	\$5,200,898 96	\$127,948,813 04

## LIABILITIES.

NAMES.	General deposits.	Other liabilities.	Total liabilities.	Debts guar- anteed and liability thereon.
Atlantic Trust Co., N. Y. city,	\$4,767,323 23	\$21,800 00	\$6,030,731 14	.....
Binghamton Trust Co., Binghamton . . . . .	1,769,639 64	21,811 95	2,246,254 25	.....
Brooklyn Trust Co., Br'klyn,	8,967,963 01	89,556 90	12,215,784 79	.....
Buffalo Loan, Trust and Safe Deposit Co., Buffalo.....	443,230 15	57,931 11	1,418,208 12	.....
Central Trust Company, New York city . . . . .	14,421,678 42	322,889 60	28,735,582 51	.....
Columbus Trust Co., Newburgh . . . . .	144,793 97	1,442 40	268,761 96	.....
Continental Trust Company, New York city . . . . .	1,965,847 95	15,203 00	3,714,313 13	.....
Delaware Loan and Trust Co., Walton . . . . .	167,688 44	15,000 00	294,476 88	.....
Farmers' Loan and Trust Co., New York city.....	.....	122,673 37	33,576,114 02	.....
Fidelity Trust and Guaranty Company, Buffalo . . . . .	1,492,660 64	7,702 92	2,062,648 94	.....

*Statement of the Condition of the Trust Companies — (Continued).*

NAMES.	General deposits.	Other liabilities.	Total liabilities.	Debts guaranteed and liability thereon.
Franklin Trust Co., Brooklyn,	4,734,353 40	46,468 78	6,667,121 55	.....
Hamilton Trust Co., Br'klyn,	2,655,032 19	23,800 51	3,626,120 51	.....
Holland Trust Company, New York city . . . . .	236,539 13	350,319 14	1,533,843 92	.....
Ithaca Trust Co., Ithaca.....	330,383 66	2,759 85	452,572 56	.....
Kings County Trust Company, Brooklyn . . . . .	3,506,986 33	107,309 20	5,378,527 77	.....
Knickerbocker Trust Company, New York city.....	4,040,100 62	52,083 65	6,667,497 17	.....
Long Island Loan and Trust Company, Brooklyn . . . . .	2,639,573 05	33,595 21	3,577,887 10	.....
Manhattan Trust Company, New York city.....	4,030,451 68	254,135 79	6,445,471 79	.....
Mercantile Trust Company, New York city.....	21,650,467 44	.....	26,380,992 85	.....
Metropolitan Trust Company, New York city.....	6,913,905 05	66,892 32	9,014,077 34	.....
Nassau Trust Company of the City of Brooklyn.....	.....	8,549 86	2,984,868 01	.....
New York Guaranty and Indemnity Co., N. Y. city...	7,764,342 93	186,118 74	13,333,614 16	\$350,000 00
New York Life Insurance and Trust Company, N. Y. city, .....	.....	1,528,674 05	28,039 071 12	.....
New York Security and Trust Company, New York city..	.....	32,765 87	9,898,359 05	.....
Orange County Trust and Safe Deposit Co., Middletown...	.....	15,276 82	671,190 59	.....
People's Trust Co., Brooklyn,	6,487,834 02	128,935 50	8,641,688 87	.....
Real Estate Trust Company, New York city.....	.....	.....	3,414,392 58	.....
Rochester Trust and Safe Deposit Company, Rochester...	3,281,760 37	.....	3,865,958 72	.....
Security Trust Company of Rochester . . . . .	720,734 57	.....	1,118,586 61	.....
The State Trust Company, New York city.....	.....	11,286 28	8,213,696 60	.....
Title Guarantee and Trust Company, New York city..	433,574 04	274,875 40	3,676,685 28	.....
Trust and Deposit Company of Onondaga, Syracuse.....	1,574,602 00	229 17	1,569,255 46	.....
Union Trust Company, New York city . . . . .	31,324,013 46	390,922 63	37,446,576 82	.....
Union Trust Company of Jamestown . . . . .	61,576 85	.....	257,618 96	.....
United States Mortgage Company, New York city.....	4,107,314 10	1,247,979 79	8,141,116 49	.....
United States Transfer and Exchange Assn., N. Y. city, .....	.....	107,925 00	316,786 95	.....
United States Trust Company, New York city.....	.....	1,133,608 09	53,423,334 75	.....
Washington Trust Company, New York city.....	3,290,601 34	5,773 03	4,242,537 17	.....
Total . . . . .	\$143,924,991 68	\$6,686,590 93	\$349,871,326 67	\$350,000 00



*Statement of the Condition of the Trust Companies — (Continued).*

## SUPPLEMENTARY.

NAMES.	Interest, commissions and profits received during the year.	Interest paid and cred- ited to depositors during the year.	Expenses for year.
Atlantic Trust Company, New York city.....	\$256,175 78	\$119,822 40	\$52,036 34
Binghamton Trust Company, Binghamton.....	91,782 16	50,516 59	14,926 66
Brooklyn Trust Company, Brooklyn.....	566,005 54	221,746 10	80,509 15
Buffalo Loan, Trust and Safe Deposit Company, Buffalo . . . . .	72,962 85	38,695 23	21,058 18
Central Trust Company, New York city.....	1,543,278 23	431,204 67	157,628 18
Columbus Trust Company, Newburgh.....	13,307 19	1,312 08	6,526 30
Continental Trust Company, New York city....	131,079 82	54,175 02	42,606 44
Delaware Loan and Trust Company, Walton....	2,313 23	.....	524 79
Farmers' Loan and Trust Company, N. Y. city,	1,300,820 06	562,185 91	195,556 13
Fidelity Trust and Guaranty Company, Buffalo,	36,638 99	16,019 32	16,880 54
Franklin Trust Company, Brooklyn.....	292,283 69	112,185 72	48,812 93
Hamilton Trust Company, Brooklyn.....	139,223 28	64,417 31	28,628 14
Holland Trust Company, New York city.....	16,053 82	15,675 76	29,356 54
Ithaca Trust Company, Ithaca.....	18,497 46	8,043 42	4,400 82
Kings County Trust Company, Brooklyn.....	222,023 64	71,680 41	33,302 84
Knickerbocker Trust Company, New York city,	209,745 54	110,832 14	87,130 10
Long Island Loan and Trust Co Brooklyn....	170,080 18	69,956 46	23,627 91
Manhattan Trust Company, New York city.....	247,036 11	94,841 51	70,275 44
Mercantile Trust Company, New York city....	924,174 66	449,115 67	138,964 83
Metropolitan Trust Company, New York city..	378,837 96	166,884 63	63,104 02
Nassau Trust Company of the City of Brooklyn,	69,886 48	25,326 01	11,628 86
New York Guaranty and Indemnity Company, New York city . . . . .	612,975 50	208,435 93	121,661 89
New York Life Insurance and Trust Company, New York city . . . . .	1,141,589 24	607,965 27	101,992 94
New York Security and Trust Company, New York city . . . . .	368,935 36	129,795 17	48,961 55
Orange County Trust and Safe Deposit Com- pany, Middletown . . . . .	26,042 04	9,470 51	7,171 96
People's Trust Company, Brooklyn.....	406,595 29	157,655 76	48,858 40
Real Estate Trust Company, New York city....	123,411 41	51,025 23	32,945 16
Rochester Trust and Safe Deposit Company, Rochester . . . . .	188,935 56	107,956 33	16,513 69
Security Trust Company of Rochester.....	49,307 91	17,826 22	13,040 03
The State Trust Company, New York city.....	322,774 76	122,932 85	55,977 06
Title Guarantee and Trust Co., N. Y. city....	703,145 08	17,549 84	426,956 23
Trust and Deposit Co. of Onondaga, Syracuse,	87,711 97	52,025 78	14,298 25
Union Trust Company, New York city.....	1,203,183 65	606,522 68	172,983 74
Union Trust Company of Jamestown.....	6,761 16	831 70	3,244 08
United States Mortgage Co., New York city....	385,572 91	60,743 32	82,892 37
United States Transfer and Exchange Associa- tion, New York city.....	7,467 18	.....	7,449 61
United States Trust Co., New York city.....	2,414,768 61	911,769 40	185,710 11
Washington Trust Co., New York city.....	191,403 51	77,318 10	30,529 68
Totals . . . . .	\$14,932,877 81	\$5,821,460 45	\$2,498,671 89

*Statement of the Condition of the Trust Companies — (Continued).*  
SUPPLEMENTARY.

NAMES.	Dividends on capital de- clared for year.	Deposits made by order of court for year.	Total of deposits on which interest is al- lowed at this date.	Amount of bonds and mortgages purchased.
Atlantic Trust Co., N. Y. city..	\$60,000 00	\$222,178 99	\$4,421,246 29	.....
Binghamton Trust Co., Bing- hamton . . . . .	.....	24,378 61	1,586,608 32	.....
Brooklyn Trust Co., Brooklyn....	200,000 00	563,867 46	8,896,372 84	.....
Buffalo Loan, Trust and Safe Deposit Company, Buffalo.....	1,200 00	76,406 50	1,042,680 86	\$67,061 00
Central Trust Co., N. Y. city....	500,000 00	69,736 96	18,650,459 00	15,762 00
Columbus Trust Co., Newburgh..	.....	.....	79,075 39	7,500 00
Continental Trust Company, New York city . . . . .	7,500 00	91,182 10	2,260,803 29	212,800 00
Delaware Loan and Trust Com- pany, Walton . . . . .	.....	.....	.....	98,198 44
Farmers' Loan and Trust Com- pany, New York city.....	300,000 00	115,795 40	24,343,407 38	.....
Fidelity Trust and Guarantee Company, Buffalo . . . . .	.....	17,509 27	1,460,139 57	86,829 00
Franklin Trust Co., Brooklyn....	80,000 00	86,084 40	4,763,298 97	46,000 00
Hamilton Trust Co., Brooklyn..	37,500 00	.....	2,751,031 11	490,365 00
Holland Trust Co., N. Y. city..	25,000 00	23,820 61	157,667 86	.....
Ithaca Trust Co., Ithaca.....	.....	.....	292,903 55	17,100 00
Kings County Trust Co., Br'klyn, Knickerbocker Trust Company, New York city.....	35,000 00	.....	3,863,283 00	166,200 00
Long Island Loan and Trust Company, Brooklyn . . . . .	40,000 00	.....	2,724,069 70	106,421 48
Manhattan Trust Company, New York city . . . . .	50,000 00	267,991 44	3,711,330 34	.....
Mercantile Trust Company, New York city . . . . .	200,000 00	52,224 03	16,763,406 71	.....
Metropolitan Trust Co., New York city . . . . .	80,000 00	7,484 06	6,702,294 53	.....
Nassau Trust Company of the City of Brooklyn . . . . .	15,000 00	.....	2,282,257 34	57,500 00
New York Guaranty and In- demnity Co., N. Y. city.....	140,000 00	.....	9,196,231 44	56,286 37
New York Life Insurance and Trust Co., N. Y. city.....	300,000 00	402,758 43	23,087,261 85	.....
New York Security and Trust Company, New York city.....	50,000 00	18,244 79	6,223,215 08	250,500 00
Orange County Trust and Safe Deposit Company, Middletown,	6,000 00	6,882 28	321,597 85	23,000 00
People's Trust Co., Brooklyn....	80,000 00	67,123 00	6,208,154 20	23,000 00
Real Estate Trust Company, New York city.....	27,500 00	.....	2,600,875 20	90,000 00
Rochester Trust and Safe Deposit Company, Rochester . . . . .	.....	47,340 40	3,214,033 47	.....
Security Trust Co. of Rochester,	.....	48,294 33	578,801 69	11,200 00

*Statement of the Condition of the Trust Companies — (Continued).*

NAMES.	Dividends on capital de- clared .or year.	Deposits made by order of court for year.	Total of deposits on which interest is al- lowed at this date.	Amount of bonds and mortgages purchased.
The State Trust Co., N. Y. city, Title Guarantee and Trust Com- pany, New York city.....	60,000 00	300,942 54	5,594,138 54	24,856 93
Trust and Deposit Company of Onondaga, Syracuse . . . . .	120,000 00	.....	423,141 46	.....
Union Trust Co., N. Y. city.....	8,000 00	4,205 14	1,650,682 68	12,083 67
Union Trust Co. of Jamestown, United States Mortgage Com- pany, New York city.....	240,000 00	229,854 32	29,319,701 65	722,200 00
United States Transfer and Ex- change Assn., N. Y. city....	.....	.....	106,476 16	172,122 07
United States Trust Co., New York city . . . . .	120,000 00	.....	4,109,496 90	1,622,325 00
Washington Trust Company, New York city . . . . .	.....	.....	.....	.....
	640,000 00	682,703 43	37,910,191 47	.....
	30,000 00	.....	3,247,222 36	59,000 00
<b>Totals . . . . .</b>	<b>\$3,497,700 00</b>	<b>\$3,576,480 80</b>	<b>\$244,259,297 00</b>	<b>\$4,501,310 96</b>

**DOCUMENT NO. 62.****REPORT OF THE COMMITTEE ON EDUCATION AND THE FUNDS  
PERTAINING THERETO.***To the Convention:*

The Committee on Education and the funds pertaining thereto report the following article:

**ARTICLE IX.**

SECTION 1. The Legislature shall provide for the maintenance and support of a system of free common schools wherein all the children of this State may be educated.

Sec. 2. The corporation created in seventeen hundred and eighty-four, under the name of the Regents of the University of the State of New York, is hereby continued under the name of the University of the State of New York. It shall be governed, and all its corporate powers exercised by not less than nine regents.

Sec. 3. The common school fund, the capital of the literature fund, and the capital of the United States deposit fund shall be respectively preserved inviolate. The revenue of the said common school fund shall be applied to the support of common schools; the revenue of the said literature fund shall be applied to the support of academies, and the sum of twenty-five thousand dollars of the revenues of the United States deposit fund shall each year be appropriated to and made part of the capital of the said common school fund.

Sec. 4. Neither the State nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning, wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught.

This section shall not apply to schools in institutions subject to the visitation and inspection of the State Board of Charities.

In explanation of their action the committee respectfully submit the following considerations:

Your committee have recognized the fact that they were intrusted with one of the most important parts of the work of this Convention, and that they had to deal with a subject nearer, perhaps, than

any other to the direct personal interests of all the people of the State. They have held twenty-one meetings with unusually large attendance, all members of the committee being present on many of these occasions. In the careful study of the questions involved in its report they have received the aid of a large number of suggestions from most of the distinguished educators of the State, who either appeared before the committee or submitted their views in writing. The public has been kept advised by frequent and generally accurate reports in the press of the subjects under consideration, and a valuable opportunity was thus given to your committee for consulting and keeping in touch with public opinion. The attitude of the people of the State toward our work has been very significant. There has been no distinction of party, and but little serious difference of opinion, except upon some features of section four of the proposed article. The intelligence of the State has been found a unit in demanding from this Convention such action regarding education as should strengthen and protect the system which has already done so much, not only for the intellectual, but also for the material prosperity of the State of New York. There seems to be no principle upon which the people of this commonwealth are so united and agreed as this, that the first great duty of the State is to protect and foster its educational interests. But for its quaint phraseology and prolixity we have no doubt that the people of this State would emphatically ratify the adoption by this Convention of the article of the Constitution of Massachusetts, which has been a model for many other State Constitutions, and which your committee feel justified in quoting entire:

“Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university \* \* \* , public schools and grammar schools in the towns; to encourage private societies and public institutions, by rewards and immunities, for the promotion of agriculture, art, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; also sincerity, good

humor, and all social affections, and generous sentiments, among the people."

There has been no dissension among the members of your committee as to the end to be aimed at. The question has been simply to find the most effective method and to decide how much of that method should be in the fundamental law.

#### COMMON SCHOOLS.

The present Constitution is silent upon the vital point of the establishment and maintenance of a system of free common schools. It may be urged that no imagination can picture this State refusing to provide education for its children, and for this reason the declaration which your committee have reported in section 1 might, no doubt, be omitted without endangering the stability of our present system of education. But the same reasoning would apply to many other matters, though fundamental, and it is a significant fact that within the last half century of constitutional revision no other State of the Union has considered it superfluous or unwise to make such an affirmation in its fundamental law. Your committee, therefore, recommends the adoption of section 1 as an explicit direction to the Legislature to provide "for a system of free common schools wherein all the children of this State may be educated." This requires not simply schools, but a system; not merely that they shall be common, but free, and not only that they shall be numerous, but that they shall be sufficient in number, so that all the children of the State may, unless otherwise provided for, receive in them their education. No desire to confine the new Constitution to the narrowest possible limits of space should prevent the adoption of an enactment declaring in the strongest possible terms the interest of the State in its common schools. Whatever may have been their value heretofore, and language has been strained to the utmost in applying to them terms of praise, their importance for the future cannot be overestimated. The public problems confronting the rising generation will demand accurate knowledge and the highest development of reasoning power more than ever before, and, in view of the State's policy, as to higher education, to which reference will presently be made, too much attention cannot be called to the fact that the highest leadership is impossible without intelligent following, and that the foundation of our educational system must be permanent, broad and firm, if the superstructure is to be of real value.

We may add that in giving to the common schools the protection of the Constitution your committee has followed the example of the like committee of the Constitutional Convention of 1867-68.

## SECONDARY AND HIGHER EDUCATION.

The second section of our proposed article gives constitutional recognition and permanence to the University of the State of New York, leaving its powers and duties, as heretofore, entirely under the control of the Legislature. We believe that the adoption of this section is prayed for with practical unanimity by the most competent educators of the State, and that it will be a long step forward in the line of educational progress. It is impossible, however, to discuss the principles involved herein without regard to the historic policy of the State toward secondary and higher education, for the reason that the section simply crystallizes into a constitutional mandate the settled policy of the State for over one hundred years.

There are to-day two distinct co-ordinate systems of public education in New York, occupying different fields, and organized upon different plans, working mostly without reference to each other and yet vitally connected—the University of the State of New York, created in 1784, and the Department of Public Instruction, created as a separate office in 1854. Taken together they form a system without theoretic unity, and with great, and for the most part unnecessary, complexity. The practical effects of this state of things have not usually manifested themselves as evil to the extent which might readily be supposed. In the words of Dr. Sidney Sherwood, “like the English Constitution, the New York educational system is the result of historic growth, and the practical gifts of the people have made possible the harmonious efficient management of what would seem like an ill-contrived machine, were it the contrivance of a single mind or a single Legislature.” The University of the State of New York is the oldest institution of the State and has survived unchanged all the vicissitudes of more than a century. In the regard of other States and countries it is this university which has given New York her reputation and her position in the literature of education. At the World’s Fair in Paris, in 1889, the grand prix, the highest award was given to the Regents of the University in recognition of the fact, which is well known to students of French educational history, that Napoleon modeled the National University of France upon the University of the State of New York, then recently established by the creative genius of Alexander Hamilton, Ezra L’Hommedieu and their associates in the American State, which was to win and wear so long the imperial name. At the World’s Fair of 1893 a special recognition and award came from the jury to this State because of the long line of its illustrious citizens who had

served it so efficiently as Regents, without other compensation than the pleasure of performing well one of the most important public duties that could fall to any citizen. New York still has the honor of being the only American State having a separate department devoted to the interests of higher education, and in which all chartered institutions for secondary and higher instruction in the State are embraced. It is, therefore, the one State which carries into full practical effect the principle that all education is the highest and greatest interest of the commonwealth. This position has not been taken or maintained by this State without grave objections and severe criticism. Your committee deem it inexpedient, on this occasion, to discuss in detail the controversy as to whether higher education is in any sense a concern of the State. On the abstract merits of this question there may still be difference of opinion, even in this Convention, but there can be no question as to the settled policy of the State of New York.

For over a century New York has been the pioneer State in encouraging secondary education, and, to any one who reads aright, the connection is manifest between the improvement and growth of its schools and its material prosperity. Moreover, in the history of this State, as elsewhere, the great historical truth, which is often lost sight of, has been made manifest, namely, that education works downward from the higher institutions of learning, and by no means, as might be supposed on superficial thought, from the common schools up. Higher education here, as in every other civilized country, has been the chief factor in developing the elementary and secondary schools. Universities are older than all schemes of public education, and out of the universities have come most of the men whose influence has been effective in establishing great systems of popular schools. Moreover, while from the universities of Europe not a few men of learning have come who have been hostile to popular education, not one example of such a perverted mind can be cited in this country. To quote the admirable language of President Seth Low, of Columbia College, "elementary and secondary education, as systems which have been made available to great masses of men, have followed the dissemination of light that has proceeded from the universities as light shines from the stars in the wide arch of heaven. It is the stars that have made the light, not the light that makes the stars. The importance of this fact can be readily understood. If systems of education grow from the bottom up, they may be right who contend that at a certain point the interest of the State in education may be arbitrarily closed. But if, as it seems to me history makes



clear, the system of the lower education has followed upon and springs from the higher, then it is equally clear that any State that desires its work in elementary education to remain healthy and efficient, must be not less careful to promote and encourage education in all its higher developments, than it is to do so at the bottom. \* \* \* If, in the human body, the head is to be removed, as a costly ornament, because it takes as much food to support one head as to animate two feet, the result would be to render the feet and all the other members useless. The same result would follow with absolute certainty in a system of popular education. It is altogether delusive to imagine that the interest of the State can be confined to the lower members because they are more numerously patronized." Against this theory there has never been a lack of protest or objection. The plausible argument that the State should merely assure its safety, upon the basis of a citizenship informed as to the requisites of that safety, and that this is assured when the citizen has received an education sufficient to enable him to vote intelligently; that the State should not do for the individual anything which he can or should do for himself, and that the voluntary system would provide for all the needs of the individual beyond the elementary boundary, has been urged in season and out of season, but by a dwindling minority, both of the educators and of the people of the State. Mature reflection and sounder reason have not failed to impress the people of the State with the speciousness and fallacy of all this argumentation.

That eminent and far-seeing statesman, Horatio Seymour, touched the popular chord when he said in one of the best of his addresses, before the school commissioners and city superintendents at Utica, February 21, 1878: "In some way we have lost sight of the laws made in the early days of New York, and of the views held by the great men who first gave shape to its policy. They made a law which they meant should reach all classes, and to give a chance for all to gain knowledge in its largest forms and best estate. There are no grander words to be found in our statute books when we see their full scope than these: 'An university is instituted in this State of which the government is, and shall continue to be, vested in a Board of Regents.' \* \* \* There is no just view of education which does not take into account its diffusive nature. But it may be said, if all this is true, it is still best to leave higher education to private support. It will always get great aid from that source, but, if it depends upon that alone, only a class can enjoy it. It would leave a wide gap between the schools for all and the schools for a few. It would shut out many of the best

and brightest minds, and their loss would be a public loss. It would break up the unit of our system, its broad scope and the sympathies which should run through and permeate the whole."

In the judgment of your committee the people well know, or instinctively feel that it is the highest wisdom to make their own schools so good that the rich will attend them, and to put schooling before the poor in the light of a duty rather than a privilege. They know full well that by striking at the top they would paralyze the bottom, and that an efficient system of isolated common schools is a practical impossibility. They realize the fact that it is only from the public schools and academies that competent teachers for the common schools can be obtained. From the best opinion which your committee has been able to obtain it would seem to be a moderate estimate to say that five-sixths of the teachers of the common and district schools of the State at the present time have received part or the whole of their advanced education in the public high schools and academies of the State, and not more than about one-tenth of the entire number are graduates even of the normal schools established by the State itself for the training of teachers. To suppose that the common schools would flourish without a system of academic and higher education would be, to quote the words of Superintendent Kennedy, "infancy trying to sustain itself. If the opponents of high schools could carry their point, we should soon have class education in its most vicious form. The wealthy classes would simply send their children to private high schools, and the progressive deterioration of the lower grades, unsupported by a high-school center, would cause them to withdraw their children entirely from those grades. Those grades would thus be abandoned to the poorer classes, and attendance in them would become a badge of indigence. When the public school degenerates into a mere charity school the proudest of the poor will save their self-respect by keeping out of it. The public school then would be merely an assembly of paupers. As the genius of the American people have contrived it, it is the West Point of civil life, it is the people's training-house for an on-coming citizenship."

That the State of New York upon this question is only the leader in a movement which comprises the intelligence of the entire country is proved by the figures of the report for the year 1890-91 (the last one available) of the United States Commissioner of Education, Dr. William T. Harris. According to this report there were then in the United States more than 2,700 public high schools, containing in all upwards of 210,000 students. At the same time there were more than 1,700 private schools of similar grade

containing upwards of 98,000 students. This shows that in the United States two-thirds of the pupils who are receiving education of this grade are receiving it at the expense of the public. It would also seem to show conclusively that the policy which thus commends itself to the great body of the people in all the United States, and which they consistently pursue year after year, is one which has justified itself according to the common judgment of our countrymen. In fixing this policy with all the solemnity and permanence of a constitutional provision, this Convention will be making an advance in the line of educational progress worthy to be compared with the memorable law enacted by our fathers more than a century ago.

#### DEPARTMENT OF PUBLIC INSTRUCTION.

Your committee is of the opinion that the present Department of Public Instruction has, since its establishment as a separate office, performed the duties pertaining to it as faithfully and well as was possible in view of the disadvantage arising from its want of organic connection with the rest of the educational system. The management of the common school interests has been careful, economical and evidently animated by a noble ambition to place the common schools of New York at least upon a level with those of other States. We believe that unification of the entire system would tend to increase the efficiency of the department to the highest degree, and proud, as we have every reason to be, of the common-school system of the State, there can be no doubt that, especially so far as the rural and district schools are concerned, there is still room for much improvement, and the Superintendency of Public Instruction must continue to afford an inviting field for the highest ambition of the best educational talent of the State.

#### UNIFICATION OF THE DUAL SYSTEM.

Besides vindicating the wisdom of State recognition and aid to higher education, the policy of New York exemplifies most signally the importance of a well-considered system. The danger which, above all others, must be avoided by a democratic commonwealth is the disintegration of its people into units with no immediate concern but self-interest; into individuals to whom social bonds and duties appear of little moment. The same danger exists to an even greater extent in education. There, more than elsewhere, it is necessary to battle most vigorously against anarchy and want of organization, in proportion as the subjects of knowledge and the demands upon the individual brain become more

numerous and more complex. Science and industry are advancing with such rapid strides that the human brain cannot, save by more and more rigorous discipline, adapt itself to such a variety of formulas, theories and applications. Alfred Fouillee, the distinguished French educator, rightly says: "That nation which can introduce into its education the most powerful and the most consolidated organization will *ipso facto* enjoy in the world of intellect a superiority analogous to that of well-organized governments and armies."

Prof. Huxley's definition of a system of education worthy of the name has become classical, as requiring an educational ladder with its foot in the gutter and its top in the university, every single step and rung complete and within the reach of every climber. The vision of just this system was, no doubt, in the minds of the founders of the University of the State of New York, and it is for this Convention to determine how far that vision shall now be realized. In the present educational system of the State there is a break in the progression; not, indeed, fatal, but serious and unnecessary, and presenting a problem which calls upon the best intelligence of the State for its solution. Upon the abstract principle that unification of the dual education system of the State would be advantageous to all concerned, your committee is unanimous; but there has been a great diversity of views regarding the method of bringing about such a result, and especially upon the fundamental question as to whether it was desirable at all to make this matter the subject of a constitutional enactment. Two methods of unification have suggested themselves:

First. To make the Superintendent of Public Instruction elective by the Board of Regents of the University, holding office at their pleasure, or upon a fixed term, as the case might be.

Second. The creation of a new central authority uniting in itself the functions of both the University and the Department of Public Instruction.

A third method, subordinating the University to the Department of Public Instruction, has not been seriously considered.

In discussing any plan of unification it is important to remember that the establishment of a complete and harmonious system of education is only a part of the end to be attained. It is of equal, if not of greater, importance that every possible effort should be made to remove the educational system of the State wholly from the domain of party politics. All the critics of our public-school system agree upon this one point, that party politics constitutes the greatest danger to which the system is exposed, and

that little improvement, whether in method or results, can be hoped for so long as public service in connection with schools and educational institutions is considered in the light of spoils belonging to the victor in a purely political contest. Your committee wishes to put on record an emphatic indorsement of this view, although they recognize that but little reform is possible in this direction by a constitutional enactment. We believe, however, that public opinion is rapidly becoming convinced that the spoils system must be eliminated from the public service, at least so far as education is concerned. The principal argument advanced in favor of the first of the above methods of unification was that, whereas the Superintendent of Public Instruction is now elected by the Legislature, invariably from partisan considerations, the Board of Regents could be trusted, in view of their unbroken record and traditions, to make a selection only upon the broad ground of approved competency and the public interest. The principal objection, moreover, to the creation of a new central authority, with power to elect a superintendent, was felt to be the strong probability that such a plan would tend rather to increase than to diminish the influence of party politics upon the educational interests of the State.

After careful examination and full discussion, and after hearing many able arguments on all sides of the question, your committee were unable to agree upon any constitutional provision for unification. The various plans presented were, necessarily, in a large degree tentative. None of them seemed to a majority of the committee to be so certain of accomplishing the desired result as to justify its adoption in a form likely to remain unchanged for many years, thus preventing a trial of other methods and the final adoption of that which experience might demonstrate to be the wisest and best. The University of the State being recognized by section 2 of our proposed article, and being thus put beyond the reach of hasty or ill-advised legislation, the majority of your committee feel that all further steps may safely be left to the Legislature. Public opinion may be trusted to enforce the demand of those best qualified to judge, for any legislation necessary to give the highest possible efficiency to all the schools and institutions of learning of the State, and we think that enough will have been accomplished to insure further progress upon correct lines, if the section in the form in which we submit it shall receive the approval of the Convention and ultimately of the people.

## FUNDS.

The permanent educational funds of the State are as follows:

First. The Common School Fund was, in 1893, four million three hundred and seventy-three thousand one hundred and forty and 77-100 (\$4,373,140.77-100) dollars. This fund is invested, and produced, according to the last report of the Comptroller, an income in 1893 of one hundred and sixty-one thousand and forty-eight and 54-100 (\$161,048.54-100) dollars.

Second. The United States Deposit Fund, which consists of money turned over to the State under act of Congress, passed June 23, 1836. Its investment was provided for by chapter 150 of the Laws of New York of 1837. The total amount of the fund in 1893 was four million and fourteen thousand five hundred twenty and 71-100 (\$4,014,520.71-100) dollars, producing an income in 1893 of one hundred and fifty-two thousand four hundred thirty-one and 30-100 (\$152,431.30-100) dollars.

Third. The College Land Scrip Fund, amounting to the sum of four hundred and seventy-four thousand four hundred nineteen and 12-100 (\$474,419.12-100) dollars, producing an income in 1893 of eighteen thousand nine hundred seventy-two and 50-100 (\$18,972.50-100) dollars, all of which was paid over to the trustees of Cornell University, pursuant to chapter 460 of the Laws of 1893, and chapter 583 of the Laws of 1865.

Fourth. The Literature Fund, which, in 1893, amounted to two hundred and eighty-four thousand two hundred one and 31-100 (\$284,201.30-100) dollars; the income therefrom in 1893 was ten thousand eighty-two and 50-100 (\$10,082.50-100) dollars.

The income derived from this fund is yearly paid over to the University of the State of New York, and by section 26, chapter 378, Laws of 1892, the amount of the income has been supplemented annually by thirty-four thousand (\$34,000) dollars taken from the income of the United States Deposit Fund and sixty thousand (\$60,000) dollars taken from the general fund. The total amount is distributed among the academies and union schools of the State by the University. The total number of institutions receiving aid from this fund for the year 1894 is 375, and we are informed that the amount received by each institution is, for the most part, expended in the purchase of books.

The investment of the Common School, United States Deposit and Literature Fund is provided for by the Revised Statutes. (See 8th edition, vol. 1, page 568 to section 4, and by chapter 50 of the Laws of 1889.) This confines the investments to public securities

of the United States, of this State and of the cities, villages, towns, counties and union free school districts of the State.

Your committee is of the opinion that the provisions of the present Constitution, with reference to these funds, need no revision or amendment. The Constitution provides for the investment of all the permanent educational funds of the State, except the College Land Scrip Fund, and there seems to be no sufficient reason for a disturbance of the settled policy of the State upon this comparatively unimportant point.

Your committee do not think that the fund known as the College Land Scrip Fund, the interest on which is now paid to Cornell University under the provisions of chapter 585 of the Laws of 1865, can ever be diverted from its present purpose. It is controlled entirely by the conditions imposed by the act of Congress, passed July 2, 1862, entitled "An act donating public lands to the several States and territories which may provide colleges for the benefit of agricultural and mechanical arts."

These conditions were accepted by this State in chapter 460, Laws of 1863, which regulates the creation of the fund and the disbursements of the interest arising therefrom. In 1865 Ezra Cornell, Horace Greeley and other citizens were allowed, by an act passed April twenty-seventh of that year, to form a corporation to be known as Cornell University, located at Ithaca, the object of which was to teach such branches of learning as applied to agricultural or mechanical arts, including military tactics. This charter was evidently framed for the purpose of bringing Cornell University directly within the scope of the act of Congress above referred to and the Laws of 1863 ratifying said act. In the act granting the chapter, paragraph 6, it says:

"The income, revenue and avails received from the investment of the proceeds of the sale of the lands or the scrip thereof, or any part thereof, granted by the act of Congress, shall be appropriated and from time to time paid over, as soon as received, to the trustees of said corporation, provided, however, that no part of said interest shall be paid until Ezra Cornell has given absolutely, and without any limitation, to said corporation the sum of five hundred thousand dollars, and the sum of twenty-five thousand dollars to the Genesee College, situate at Lima, in this State."

These conditions having been complied with, the Regents directed, in pursuance to the Laws of 1865, above referred to that the interest of the Land Scrip Fund be paid over to the trustees of Cornell University. It would seem, therefore, that the capital sum of the Land Scrip Fund is protected by the conditions

contained in the act of Congress, passed July 2, 1862, and accepted by the State of New York by chapter 460, Laws of 1862, and that the income of such fund is directed, disbursed and expended by the trustees of the Cornell University according to the terms of their charter contained in the act passed April 27, 1864. All of these acts constitute, in the opinion of your committee, a solemn compact between the United States, the State of New York and the trustees of the Cornell University, for the purpose of securing the safety of said fund and the proper expenditure of its interest. Should Cornell University cease to exist, this fund would still remain sacred and inviolate, and could not be used or expended for any other purpose other than that provided for in the several acts.

We do not think, therefore, that it is necessary to mention this fund in any constitutional provision that may be framed for the purpose of protecting the educational funds of the State.

#### SECTARIAN APPROPRIATIONS.

The first sentence of the last section of the proposed article needs no explanation or defense. In the opinion of the committee there is no demand from the people of the State upon this Convention so unmistakable, widespread and urgent; none, moreover, so well grounded in right and reason, as that the public-school system of the State shall be forever protected by constitutional safeguards from all sectarian influence or interference, and that public money shall not be used, directly or indirectly, to propagate denominational tenets or doctrines. We have sought to give the clearest and strongest expression possible to these principles in the proposed section. The arguments in favor of such a provision are, in our opinion, conclusive, and the objection that it will result in making the schools "Godless," or that such a constitutional prohibition would imply, on the part of the people enacting it, hostility, or even indifference, to religion, seem to us to be both groundless and absurd. In adopting this section the Convention will, in our opinion, most effectively aid all that is highest and best in religion; for by establishing the principle that State education must necessarily be secular in its character, the field is left open beyond question or misunderstanding for religious teaching in the family, the Sunday school and the church. The almost inevitable question has been raised in considering the language which we have adopted, as to whether the use of the words "denominational tenets or doctrines" will in any way interfere with the reading of the Bible in public schools and institutions of learning. Our atten-



tion has been called to the case of the State ex rel. Weiss v. the District Board of School District No. 8, in the city of Edgerton (in the 76th vol. Wis. Reports, page 177), in which the Supreme Court of the State of Wisconsin decided that a prohibition of "sectarian instruction" prevented the reading of the Bible. Without discussing the merits of the case or the soundness of the position taken by the Wisconsin court, it will suffice to say that, in the opinion of your committee, the words proposed by us cannot, with any reasonable interpretation or construction, be taken to prohibit the reading of the Bible in the public schools. We are aware of the fact that explanatory words on the part of the committee, or even of this Convention, are in no sense binding upon a judicial tribunal in construing or interpreting a constitutional provision, but we, nevertheless, consider it proper to put on record our own interpretation of the words which we submit to the Convention for its adoption.

There is one exceptional case provided for in the first sentence of this section, in which public money may be used in connection with a sectarian school or institution of learning, and that is contained in the words "otherwise than for examination or inspection" of such institutions. This exception, in our opinion, in no way affects the principle, except in so far as it emphasizes even more strongly the interest and latent power of the State, with regard to all institutions of learning. Without the words last quoted the question might be raised, whether the section would not prohibit even the trifling expenditure necessary for the inspection and examination of denominational schools which are now connected with the University of the State of New York, and this question necessarily raises the broader one, as to whether this connection should be maintained or prohibited as a violation of the principle sought to be established in this article. Your committee were unanimously of the opinion that the connection between denominational higher institutions of learning and the University of the State of New York is of the greatest advantage, not only to the institutions, but to the State, so long as this connection involves no further aid than is incidental to examination and inspection. The policy of the State, as has been heretofore referred to, is not to monopolize higher education, but to create one grand supervisory university, of which all academies and colleges should be part, acting in concert under a common control, and yet admitting of every diversity demanded by the sentiments and conditions of the community in which they exist, and affording absolute freedom of instruction. Heretofore no distinction has been made between

sectarian and non-sectarian academies and high schools in the distribution of the proceeds of the Literature Fund, whereby every institution became entitled to a *per capita* allowance for every student who passed the Regents' examinations, and also to a suitable contribution to its library and scientific apparatus. This part of the State's assistance is, in our opinion, contrary to the sound principle of separation of church and State, and will be absolutely prohibited by the adoption of our proposed amendment. It is, indeed, a matter of comparatively trifling concern to the academies themselves, the whole amount so distributed to sectarian institutions in the year 1893 having been only \$5,361.09. It is not contended that heretofore any harm or injury to the State has come from this practice, but, being contrary to public policy in the highest sense, its discontinuance is demanded, not only for the sake of the State, but of the institutions and churches themselves. This, however, by no means necessarily implies that the supervision of the University and the system of regular examinations by which the efficiency of these institutions is tested, must be given up. We understand that the institutions themselves are very desirous of continuing the Regents' examinations, and of receiving the certificates of the University for such of their students as shall pass them. So far from injuring the educational system of the State, we are of opinion that the latter will be largely benefited by such a course, which extends the uniformity of excellence maintained by State institutions to those under private and sectarian control, and which, by causing the adoption, in many instances, of modern and thoroughly American text-books and methods, necessarily tends to break down the barriers of prejudice by which our people may be divided. That there may be no question of the authority of the University to continue these examinations, the words last above quoted have been introduced into this section.

The second sentence of the section, "this section shall not apply to schools in institutions subject to visitation and inspection by the State Board of Charities," has been inserted by a majority of the committee — a minority, consisting of Messrs. Durfee, Hirschberg, Hill, Tibbetts, Cornwell, Fraser and Holls, dissenting — and explains itself. It must necessarily be read in connection with the article which may be adopted upon the recommendation of the Committee on Charities and Charitable Institutions.

All of which is respectfully submitted.

FREDERICK W. HOLLS,

*Chairman.*

Dated ALBANY, August 23, 1894.

## DOCUMENT NO. 65.

### REPORT OF THE COMMITTEE ON LEGISLATIVE ORGANIZATION ON REAPPORTIONMENT OF SENATE AND ASSEMBLY DISTRICTS.

#### *To the Constitutional Convention:*

The Committee on Legislative Organization reports herewith to the Convention a proposed amendment of article 3 of the Constitution, which provides:

First. For an increase in the number of Senators from thirty-two to fifty, and of Members of Assembly from 128 to 150.

Second. For a new apportionment of the Senate and Assembly districts.

Third. Rules governing all future apportionments which insure, in the opinion of the committee, equality and fairness, and guard against the inequalities and unfairness which have heretofore obtained.

In proposing a new apportionment of the Senate districts and fixing the number of Members of the Assembly in each county, your committee follows the precedents established by the Constitutional Conventions of 1821, 1846 and 1867, and remedies the gross inequalities and injustices of the Apportionment Act of 1892.

The provisions of the amendment reported by your committee are, in substance:

First. That an enumeration of the inhabitants of the State shall be taken in 1905, and in each tenth year thereafter, under the direction of the Secretary of State, and when taken shall be taken during the months of May and June. The Secretary of State is named for the reason that much conflict has heretofore arisen, and may arise again, between the legislative and executive branches of the State government, as to the officer who should have the direction and the management of the census bureau. If it is thus settled in advance, and before it is known what political party will be in power at the time that the census is taken, upon what department of the government this duty shall rest, one of the most serious sources of conflict and difficulty in taking enumeration will be removed. The power of the Legislature to control and regulate the expenditure necessary to make the enumeration is still preserved. The provisions that the enumeration shall be taken in the months of May and June will insure fairness to both the rural and city districts.

Second. In the formation of Senate districts, it is provided that no town or block in a city shall be divided, and that no districts shall contain a greater excess in population over an adjoining district in the same county than the population of a town or block therein which is so situated that it can be put in either of the two adjoining districts. As the population of a town or block is not apt to exceed 2,000, and probably never exceeds 5,000 citizens, this will reduce to a minimum the opportunity to create any great inequality between the districts. Heretofore there has been no unit of population in cities. Without the establishment of such a unit, your committee can discover no practicable rule for equality which will be more definite than the existing provisions of the Constitution, which the Court of Appeals has pronounced inadequate. The further provision that an additional Senator shall not be apportioned on less than one-half the ratio, is so manifestly proper that it demands no explanation. Your committee have also deemed it wise to incorporate a provision that an additional Senator shall not be apportioned to any county, on less than the full ratio (obtained by dividing the total citizen population of the State by the whole number of Senators) when the average number of inhabitants, including aliens in all the Senate districts in such county, would not otherwise exceed by one-tenth the full ratio. The working of this principle may be illustrated as follows: If seven Senators are apportioned to the county of Kings, there would be a remainder of 58,264 citizens, being just in excess of one-half the present ratio, which is 115,817. If an additional Senator was apportioned to that county, each of the eight adjoining senatorial districts in that county would have to contribute so many of its citizens that each would have less than said ratio, but under the plan proposed by your committee, each district would have only 8,323 more than the ratio. According to the plan of your committee, there will be in no other part of the State, except Kings county, eight districts in block, each one of which is below the ratio, and it is not thought either wise or just, where so many Senators are apportioned to a single county, to permit the average representation in the senatorial districts to fall uniformly below the ratio. The inequality necessarily arising from the rule preserving county lines, would operate with great harshness upon those counties of the State which are too small to be entitled to a Senator, and which must be combined in the formation of senatorial districts, if counties entitled to a large number of Senators were permitted to have a representation on less than the ratio. We have, under our amendment, proposed that New York

shall have twelve Senators; Kings, seven Senators; Erie, three Senators, and Monroe, two Senators. These four counties have approximately one-half of all the Senators apportioned, and, unless some such rule as that suggested by your committee is provided in the Constitution, it may easily happen that the rest of the State will on the average have a smaller representation in the Senate than those four counties. Inasmuch as every Senator from a county, in a broad sense, represents the entire county, our proposed rule can never work any real injustice. The rule regarding county lines makes inequality as between the rural counties of the State and the city counties of the State inevitable to a certain degree, and, we think, that this inequality should not be increased as against the rural counties, and in favor of the counties of the State embracing the great cities which are incorporated entities, unified in interest, and with a small area of population.

Third. As to the apportionment of Members of the Assembly, your committee have recommended rules which will make this apportionment hereafter a matter of strict mathematical calculation, and which, it is believed, will approach more nearly to equality of representation than any other apportionment that has ever been made in this State. The principal difficulty in reaching absolute equality arises here also from regarding the county lines as controlling. But with 150 Members of Assembly, the ratio is 38,606, and the inequalities are not considerable, except in the few cases arising under that provision of the Constitution which provides that every county, no matter what its population, shall have a Member of Assembly. Your committee has not deemed it wise to attempt to change this rule, which has been so long established, but has attempted to formulate new rules by which the loss of representation occurring in those counties having one or more ratios must be equally borne by both the rural and city counties of the State. We have hereto annexed tabular statements showing the three classes into which the counties are divided for the purpose of an apportionment of Members of Assembly. From this it will appear that while the original ratio for each Member of Assembly is 38,606, the last or highest ratio in apportioning Members of Assembly in the ten largest counties of the State is only 40,566. As appears by Assembly Exhibit 3 hereto attached, the average population in the Assembly districts having one or two Members of Assembly, by reason of having one or more full ratios, is 39,273. The same rules requiring equality in population among the districts in counties having more than one Member of Assembly, are applied by your

committee to such Assembly districts as are applied as heretofore stated to the Senate districts. And it is specifically required that every Assembly district shall be wholly within some Assembly district. Having formulated the foregoing rules to insure equal representation in both Senate and Assembly districts, your committee have deemed it advisable to increase the number of Senators from thirty-five to fifty, and of Assemblymen from 128 to 150 in order to effectuate a more complete representation of the whole people of the State. The present number of each house of the Legislature was fixed by the Constitution of 1821, when the population of the State was 1,372,812. The total citizen population of the State is, under the census of 1892, nearly five times greater, viz., 5,790,865. If Senators are to have any sense of locality, and to intelligently represent the interests of their several districts, it is of the greatest importance that the rural districts should be confined within reasonable territorial limits. Under the apportionment of 1892, the largest senatorial district in population, as well as in territory, outside of the city of New York, is the Twenty-first, composed of the counties of Washington, Warren, Essex, Clinton, Franklin, Hamilton and Fulton, containing a citizen population of 229,905. This district is much larger in territory than the average senatorial district of the State. When the senatorial districts were but eight in number, the controlling reason for the change made by the Constitutional Convention of 1846, from eight senatorial districts, each electing four Senators, to thirty-two senatorial districts, each electing one Senator, was that the Senators from the eight large districts could have no close relation with all the people of their districts. Our proposed number of fifty Senators will substantially restore to the people approximately the same representation that they had under the Constitution of 1846, the additional eighteen Senators going to the great centers of population. The opportunity for any selfish or corrupt interest to obtain control over a body composed of fifty members will, undoubtedly, be much less than to obtain control over a body of thirty-two members. As we propose, the most popular body, the Assembly, is increased to 150, which is three times as large as the Senate, thus preserving a fair proportion between the number of members of the two bodies. Your committee, believing that municipal elections should be separated from State or national elections, under the plan proposed by the Committee on Cities to this Convention, requiring the municipal elections to be held in the odd-numbered years, and the State elections in the even-numbered years, has

also recommended, in order to bring this about, that the terms of Members of Assembly shall be extended to two years. It is necessary, if these elections are separated, that this extension should be made, or that biennial sessions should be provided for, and your committee has chosen the former method. For the purpose of securing obedience by the Legislature and by the local boards to the constitutional mandate, preventing gerrymandering, your committee have recommended that the action of these bodies should be reviewable by the courts, and that all actions and proceedings relating to apportionment should have a precedence over all other actions and proceedings on the calendars of the court. This is no innovation, for the courts of this State and other States have repeatedly held that they had power to review the action of these bodies relating to apportionment. In preparing their proposed amendment, your committee have received much valuable assistance from the amendments proposed by Messrs. Lauterbach, No. 32; Vedder, No. 13; Cookinham, No. 48; Mantanye, No. 83; Porter, No. 229; Vedder, No. 92; Jacobs, No. 97; Dean, No. 132; Davies, No. 280, and Peck, No. 359, and have embodied in our proposed amendment the salient features of Mr. Brown's proposed amendment, No. 404. It has received much assistance, also, from the arguments and suggestions of these gentlemen concerning them, which we here respectfully acknowledge. Your committee have proposed that in all cities comprising an entire county, some of which have no board of supervisors, the duty of erecting the Assembly districts should rest upon the common council, and in all other counties upon the board of supervisors. In the county of Kings and the city of Brooklyn, which are in the process of reorganization, and where the board of supervisors is to be abolished after December, 1895, and the city boundaries made co-terminus with the county boundaries, this duty has been devolved upon both the board of aldermen and the board of supervisors in joint session.

The exhibits hereto attached show the practical working of the apportionment recommended by your committee, on the basis of the citizen population shown by the State census of 1892. This census having been taken by election districts, and not by blocks, the districts in New York county have been laid out according to the election districts as they existed January 1, 1892.

Respectfully submitted,

TRACY C. BECKER,

*Chairman.*

SENATE DISTRICTS, 1894.

Population . . . . .	5,790,865
Ratio . . . . .	115,817

District No. 1:

Suffolk . . . . .	58,872
Richmond . . . . .	46,592

105,464 minus 10,353

District No. 2:

Queens . . . . .	129,974 plus 8,157
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Kings:

District No. 3 . . . . .	117,029
District No. 4 . . . . .	129,892
District No. 5 . . . . .	121,520
District No. 6 . . . . .	115,671
District No. 7 . . . . .	130,072
District No. 8 . . . . .	113,219
District No. 9 . . . . .	117,735

868,983 plus 58,264  
plus 8,323

Each district . . . . .

New York:

District No. 10 . . . . .	118,748
District No. 11 . . . . .	117,279
District No. 12 . . . . .	122,832
District No. 13 . . . . .	117,461
District No. 14 . . . . .	120,248
District No. 15 . . . . .	119,495
District No. 16 . . . . .	118,468
District No. 17 . . . . .	117,416
District No. 18 . . . . .	118,804
District No. 19 . . . . .	118,477
District No. 20 . . . . .	117,229
District No. 21 . . . . .	116,582

1,423,964 plus 34,160  
plus 2,848

Each district . . . . .

District No. 22:

Westchester . . . . .	129,224 plus 13,407
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District No. 23:

Orange . . . . .	93,271
Rockland . . . . .	31,325

124,596 plus 8,779

District No. 24:

Dutchess . . . . .	75,078
Columbia . . . . .	43,990
Putnam . . . . .	13,325

132,393 plus 16,576



District No. 25:			
Ulster . . . . .	85,392		
Greene . . . . .	30,843		
	<hr/>		
	116,235	plus	415
District No. 26:			
Delaware . . . . .	44,985		
Chenango . . . . .	37,121		
Sullivan . . . . .	31,438		
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	113,544	minus	2,263
District No. 27:			
Montgomery . . . . .	43,831		
Fulton . . . . .	37,285		
Hamilton . . . . .	4,784		
Schoharie . . . . .	28,068		
	<hr/>		
	114,568	minus	1,249
District No. 28:			
Saratoga . . . . .	54,909		
Schenectady . . . . .	31,630		
Washington . . . . .	45,144		
	<hr/>		
	131,683	plus	15,866
District No. 29:			
Albany . . . . .	156,748	plus	40,931
District No. 30:			
Rensselaer . . . . .	121,679	plus	5,862
District No. 31:			
Clinton . . . . .	44,518		
Essex . . . . .	32,092		
Warren . . . . .	28,157		
	<hr/>		
	104,767	minus	11,050
District No. 32:			
St. Lawrence . . . . .	80,679		
Franklin . . . . .	37,025		
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	117,704	plus	1,887
District No. 33:			
Otsego . . . . .	49,862		
Herkimer . . . . .	45,769		
	<hr/>		
	95,631	minus	20,186
District No. 34:			
Oneida . . . . .	117,205	plus	1,388

# CONSTITUTIONAL CONVENTION.

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District No. 35:		
Jefferson . . . . .	66,245	
Lewis . . . . .	29,414	
	<hr/>	
	95,659	minus 20,158
District No. 36:		
Onondaga . . . . .	142,058	plus 26,241
District No. 37:		
Oswego . . . . .	69,023	
Madison . . . . .	41,674	
	<hr/>	
	110,697	minus 5,120
District No. 38:		
Broome . . . . .	61,597	
Cortland . . . . .	27,955	
Tioga . . . . .	29,365	
	<hr/>	
	118,917	plus 3,100
District No. 39:		
Cayuga . . . . .	60,579	
Seneca . . . . .	25,928	
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	86,507	minus 29,310
District No. 40:		
Chemung . . . . .	45,845	
Tompkins . . . . .	33,159	
Schuyler . . . . .	16,326	
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	95,330	minus 20,487
District No. 41:		
Steuben . . . . .	81,400	
Yates . . . . .	20,316	
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	101,716	minus 14,101
District No. 42:		
Ontario . . . . .	46,974	
Wayne . . . . .	46,538	
	<hr/>	
	93,512	minus 22,305
Monroe:		
District No. 43 . . . . .	113,091	
District No. 44 . . . . .	84,612	
	<hr/>	
	181,230	minus 50,404
Each . . . . .		minus 25,202
District No. 45:		
Niagara . . . . .	59,161	
Genesee . . . . .	32,328	
Orleans . . . . .	28,732	
	<hr/>	
	120,221	plus 4,404

District No. 46:		
Allegany . . . . .	42,644	
Livingston . . . . .	35,448	
Wyoming . . . . .	30,253	
	<hr/>	
	108,345	minus 7,472
Erie:		
District No. 47 . . . . .	98,458	
District No. 48 . . . . .	102,282	
District No. 49 . . . . .	100,918	
	<hr/>	
	304,713	minus 42,730
Each . . . . .		minus 14,246
District No. 50:		
Cattaraugus . . . . .	59,700	
Chautauqua . . . . .	73,884	
	<hr/>	
	133,584	plus 17,767
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Total plus variation . . . . .	257,224	
Average plus variation . . . . .	7,795	(33)
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Total minus variation . . . . .	257,196	
Average minus variation . . . . .	15,128	(17)
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General average variation . . . . .	10,288	
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## EXHIBIT I — ASSEMBLY.

Statement showing population of counties having less than a ratio and a half.

First class — Ratio, 38,606:

	Population.
Allegany . . . . .	42,644
Chemung . . . . .	45,845
Chenango . . . . .	37,121
Clinton . . . . .	44,548
Columbia . . . . .	43,990
Cortland . . . . .	27,955
Delaware . . . . .	44,985
Essex . . . . .	32,002
Franklin . . . . .	37,025
Fulton and Hamilton . . . . .	42,069
Genesee . . . . .	32,328
Greene . . . . .	30,843
Herkimer . . . . .	45,769
Lewis . . . . .	29,414
Livingston . . . . .	35,448
Madison . . . . .	41,674
Montgomery . . . . .	43,831

# CONSTITUTIONAL CONVENTION.

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	Population.
Ontario . . . . .	46,974
Orleans . . . . .	28,732
Otsego . . . . .	49,862
Putnam . . . . .	13,325
Richmond . . . . .	46,592
Rockland . . . . .	31,325
Saratoga . . . . .	54,909
Schenectady . . . . .	31,630
Schoharie . . . . .	28,668
Schuyler . . . . .	16,326
Seneca . . . . .	25,928
Sullivan . . . . .	31,438
Tioga . . . . .	29,365
Tompkins . . . . .	33,159
Warren . . . . .	28,157
Washington . . . . .	45,144
Wayne . . . . .	46,538
Wyoming . . . . .	30,253
Yates . . . . .	20,316
Total . . . . .	1,306,083

Average population to a district, 36,280.

## EXHIBIT 2 — ASSEMBLY.

Statement showing population of counties having more than a ratio and a half, and less than two ratios and a half.

Second class — Ratio, 38,606 :

	Population.
Broome . . . . .	61,591
Cattaraugus . . . . .	59,700
Cayuga . . . . .	60,579
Chautauqua . . . . .	73,884
Dutchess . . . . .	75,078
Jefferson . . . . .	66,345
Niagara . . . . .	59,161
Orange . . . . .	93,271
Oswego . . . . .	69,023
St. Lawrence . . . . .	80,679
Steuben . . . . .	81,400
Suffolk . . . . .	58,872
Ulster . . . . .	85,392
Total . . . . .	924,875

Average population to a district, 35,572

## EXHIBIT 3 — ASSEMBLY.

Statement showing population of counties having more than two ratios and a half.

Third class — Ratio, 38,606:

	Population.	Members.
Albany . . . . .	156,748	4
Erie . . . . .	304,713	8
Kings . . . . .	868,983	21
Monroe . . . . .	181,230	4
New York . . . . .	1,423,984	35
Oneida . . . . .	117,205	3
Onondaga . . . . .	142,058	4
Queens . . . . .	123,974	3
Rensselaer . . . . .	121,679	3
Westchester . . . . .	129,224	3
Totals . . . . .	3,569,798	88

Average population to a district, 40,566.

## EXHIBIT 4 — ASSEMBLY.

Statement of counties having more than one ratio, but less than two and one-half ratios:

	Population.	Members.
Allegany . . . . .	42,644	1
Broome . . . . .	61,591	2
Cattaraugus . . . . .	59,700	2
Cayuga . . . . .	60,579	2
Chautauqua . . . . .	73,884	2
Chemung . . . . .	45,845	1
Clinton . . . . .	44,518	1
Columbia . . . . .	43,990	1
Delaware . . . . .	44,985	1
Dutchess . . . . .	75,078	2
Fulton and Hamilton . . . . .	42,069	1
Herkimer . . . . .	45,760	1
Jefferson . . . . .	66,245	2
Madison . . . . .	41,674	1
Montgomery . . . . .	43,831	1
Niagara . . . . .	59,161	2
Oneida . . . . .	117,205	3
Ontario . . . . .	46,974	1
Otsego . . . . .	49,862	1
Orange . . . . .	93,271	2
Oswego . . . . .	69,023	2
Richmond . . . . .	46,592	1
Saratoga . . . . .	54,909	1
St. Lawrence . . . . .	80,679	2

# CONSTITUTIONAL CONVENTION.

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	Population.	Members.
Steuben . . . . .	81,400	2
Suffolk . . . . .	58,872	2
Ulster . . . . .	85,392	2
Washington . . . . .	45,144	1
Wayne . . . . .	46,538	1
Totals. . . . .	1,610,210	41

Average population to a district, 39,273.

## EXHIBIT 5 — ASSEMBLY.

Statement of counties having less than one ratio, but having each one Member of Assembly:

	Population.
Chenango . . . . .	37,121
Cortland . . . . .	27,955
Essex . . . . .	32,002
Franklin . . . . .	37,025
Genesee . . . . .	32,328
Greene . . . . .	30,843
Lewis . . . . .	29,414
Livingston . . . . .	35,448
Orleans . . . . .	28,732
Putnam . . . . .	13,325
Rockland . . . . .	31,325
Schenectady . . . . .	31,630
Schoharie . . . . .	28,668
Schuyler . . . . .	13,326
Seneca . . . . .	25,928
Sullivan . . . . .	31,438
Tioga . . . . .	29,365
Tompkins . . . . .	33,159
Warren . . . . .	28,157
Wyoming . . . . .	30,253
Yates . . . . .	20,316
Total. . . . .	607,758

Average population to a district, 28,940.

## DOCUMENT NO. 66.

(In Response to Resolutions Nos. 17 and 181.)

Communication from Comptroller, and Statement of Property  
Exempt from Taxation in Several Towns of the State of New  
York:

## STATE OF NEW YORK:

COMPTROLLER'S OFFICE,

ALBANY, August 24, 1894.

HON. CHAS. E. FITCH, *Secretary Constitutional Convention, Capitol:*

DEAR SIR.—In accordance with the resolution of June 21, 1894, I beg to submit to the Convention a list of property exempt from taxation in this State, as reported by the local assessors of the several cities and towns therein, with the exception of the town of Ulster, in Ulster county; towns of Fayette and Varick, in Seneca county, and the city of Utica and towns of Ava, Bridgewater, Forestport, Verona and Westmoreland, in Oneida county, which we have been unable to obtain.

Yours respectfully,

WM. J. MORGAN,

*Deputy Comptroller.*

*STATEMENT of Property Exempt from Taxation in the Several Towns and Cities in this State as Reported by the Local Assessors, Except the Town of Ulster, in Ulster County, Towns of Fayette and Varick, in Seneca County, and the City of Utica and Towns of Ava, Bridgewater, Forestport, Verona and Westmoreland, in Oneida County.*

Counties.	Aggregate.	State.	County.
Albany . . . . .	\$35,030,595	\$20,903,450	\$31,000
Allegany . . . . .	640,632	2,387	43,900
Broome . . . . .	6,849,470	77,000	810,000
Cattaraugus . . . . .	1,820,450	50,500	70,000
Cayuga . . . . .	2,573,730	877,050	90,000
Chautauqua . . . . .	1,915,935	4,000	110,000
Chemung . . . . .	5,143,580	25,000	159,000
Chenango . . . . .	587,265	.....	54,200
Clinton . . . . .	1,627,329	285,666	102,000
Columbia . . . . .	1,720,720	.....	49,000
Cortland . . . . .	347,630	.....	21,500
Delaware . . . . .	503,908	6,410	6,800
Dutchess . . . . .	4,632,021	75,000	132,500
Erie . . . . .	25,132,467	258,932	2,468,725

*Statement of Property Exempt from Taxation — (Continued).*

Counties.	Aggregate.	State.	County.
Essex . . . . .	361,212	.....	37,500
Franklin . . . . .	425,162	37,500	46,000
Fulton . . . . .	335,695	.....	21,100
Genesee . . . . .	1,201,670	64,000	71,000
Greene . . . . .	582,425	20,200	24,000
Hamilton . . . . .	36,560	.....	2,100
Herkimer . . . . .	2,052,735	524,000	106,000
Jefferson . . . . .	2,272,846	40,000	130,000
Kings . . . . .	82,962,140	605,300	4,414,000
Lewis . . . . .	186,986	1,551	14,600
Livingston . . . . .	1,134,630	8,300	71,000
Madison . . . . .	1,339,657	30,000	39,000
Monroe . . . . .	12,126,938	141,500	700,000
Montgomery . . . . .	1,383,190	.....	20,000
New York . . . . .	308,398,295	500,000	.....
Niagara . . . . .	3,217,998	1,749,960	100,000
Oneida . . . . .	2,471,553	401,480	91,000
Onondaga . . . . .	9,359,895	384,950	400,000
Ontario . . . . .	1,352,270	104,000	48,000
Orange . . . . .	3,335,875	136,800	198,000
Orleans . . . . .	1,272,630	275,000	125,000
Oswego . . . . .	1,874,013	150,015	115,035
Otsego . . . . .	1,350,035	166,400	88,000
Putnam . . . . .	405,805	.....	40,000
Queens . . . . .	8,555,660	16,000	410,000
Rensselaer . . . . .	7,032,209	141,000	320,000
Richmond . . . . .	1,234,320	126,195	.....
Rockland . . . . .	842,035	3,700	8,000
Saratoga . . . . .	1,302,525	15,400	135,000
Schenectady . . . . .	1,593,050	41,000	40,000
Schoharie . . . . .	442,225	650	37,700
Schuyler . . . . .	406,490	.....	25,000
Seneca . . . . .	684,644	276,900	25,400
St. Lawrence . . . . .	1,992,355	.....	25,000
Steuben . . . . .	1,883,384	.....	82,000
Suffolk . . . . .	1,951,770	200,000	100,000
Sullivan . . . . .	175,900	100	15,500
Tioga . . . . .	544,620	.....	70,000
Tompkins . . . . .	3,390,345	3,500	22,000
Ulster . . . . .	1,697,920	86,440	50,000
Warren . . . . .	1,168,835	402,125	21,000
Washington . . . . .	943,190	685	62,500
Wayne . . . . .	3,322,515	1,982,730	76,800
Westchester . . . . .	12,812,301	240,425	292,750
Wyoming . . . . .	587,411	36,320	30,000
Yates . . . . .	376,650	.....	9,000
	<hr/>	<hr/>	<hr/>
	\$581,178,701	\$31,671,521	\$12,913,310



*Statement of Property Exempt from Taxation — (Continued).*

Counties.	Town, city or village.	Schools.	Churches, parsonages and cemeteries.
Albany . . . . .	\$3,317,520	\$2,582,575	\$4,774,725
Allegany . . . . .	17,300	186,530	351,315
Broome . . . . .	2,084,500	499,270	1,465,955
Cattaraugus . . . . .	199,650	490,438	916,830
Cayuga . . . . .	76,400	528,800	797,430
Chautauqua . . . . .	187,900	581,750	794,100
Chemung . . . . .	184,600	614,470	998,975
Chenango . . . . .	4,900	179,395	306,155
Clinton . . . . .	4,900	138,023	413,740
Columbia . . . . .	388,000	190,260	775,985
Cortland . . . . .	10,150	120,225	202,115
Delaware . . . . .	11,700	142,380	316,818
Dutchess . . . . .	172,700	906,390	1,583,385
Erie . . . . .	6,918,315	4,073,765	6,775,355
Essex . . . . .	6,525	102,895	212,432
Franklin . . . . .	16,150	103,815	210,557
Fulton . . . . .	9,500	85,525	219,570
Genesee . . . . .	36,800	294,975	415,780
Greene . . . . .	14,700	101,325	404,775
Hamilton . . . . .	450	15,750	18,260
Herkimer . . . . .	309,200	347,950	765,160
Jefferson . . . . .	182,750	446,990	1,036,300
Kings . . . . .	17,439,730	8,282,840	21,407,265
Lewis . . . . .	600	58,425	106,810
Livingston . . . . .	142,250	351,250	547,605
Madison . . . . .	99,400	731,430	425,200
Monroe . . . . .	1,428,900	3,320,800	4,221,903
Montgomery . . . . .	510,100	232,450	594,790
New York . . . . .	187,405,370	19,456,500	51,569,925
Niagara . . . . .	172,650	456,600	582,693
Oneida . . . . .	132,200	854,640	898,505
Onondaga . . . . .	866,950	2,446,355	3,730,180
Ontario . . . . .	41,100	422,200	716,195
Orange . . . . .	174,500	315,350	1,418,125
Orleans . . . . .	10,000	166,050	669,930
Oswego . . . . .	306,475	245,875	919,185
Otsego . . . . .	46,500	223,350	647,385
Putnam . . . . .	3,900	78,005	282,900
Queens . . . . .	521,550	1,642,760	5,884,250
Rensselaer . . . . .	841,450	1,303,075	2,558,200
Richmond . . . . .	40,300	195,950	333,875
Rockland . . . . .	10,375	100,750	710,710
St. Lawrence . . . . .	179,500	271,225	693,400
Saratoga . . . . .	92,500	437,300	959,250
Schenectady . . . . .	11,600	110,400	264,185
Schoharie . . . . .	97,000	119,350	155,330
Schuyler . . . . .	.....	104,550	274,570

*Statement of Property Exempt from Taxation — (Continued).*

Counties.	Town, city or village.	Schools.	Churches, parsonages and cemeteries.
Seneca . . . . .	229,650	467,540	995,900
Steuben . . . . .	238,600	392,910	710,195
Suffolk . . . . .	14,120	280,400	1,009,820
Sullivan . . . . .	1,200	52,975	106,125
Tioga . . . . .	25,600	119,255	318,905
Tompkins . . . . .	83,800	2,614,935	530,190
Ulster . . . . .	110,850	344,275	988,255
Warren . . . . .	207,000	128,375	391,660
Washington . . . . .	24,200	170,505	610,220
Wayne . . . . .	147,175	291,415	693,155
Westchester . . . . .	3,446,250	1,808,275	3,462,675
Wyoming . . . . .	10,150	139,135	362,061
Yates . . . . .	.....	151,950	213,900
	<hr/>	<hr/>	<hr/>
	\$229,268,105	\$61,630,411	\$134,761,444

*Statement of Property Exempt from Taxation — (Continued).*

Counties.	Charitable and reformatory institutions.	Property purchased with pension money.	Miscellaneous.	Government.
Albany . . . . .	\$1,077,500	\$2,225	\$410,500	\$1,931,100
Allegany . . . . .	4,400	19,800	15,000	.....
Broome . . . . .	1,712,500	11,245	39,000	150,000
Cattaraugus . . . . .	25,000	10,832	57,200	.....
Cayuga . . . . .	56,000	4,550	43,500	100,000
Chautauqua . . . . .	29,445	3,740	197,000	8,000
Chemung . . . . .	3,132,000	7,035	22,500	.....
Chenango . . . . .	.....	42,615	.....	.....
Clinton . . . . .	28,000	.....	25,000	630,000
Columbia . . . . .	305,000	2,550	9,925	.....
Cortland . . . . .	2,000	11,890	6,750	.....
Delaware . . . . .	.....	19,800	.....	.....
Dutchess . . . . .	1,618,600	6,446	37,000	100,000
Erie . . . . .	3,632,930	15,375	43,250	945,820
Essex . . . . .	.....	1,860	.....	.....
Franklin . . . . .	1,500	140	9,500	.....
Fulton . . . . .	.....	.....	.....	.....
Genesee . . . . .	300,000	9,115	10,000	.....
Greene . . . . .	15,000	2,425	.....	.....
Hamilton . . . . .	.....	.....	.....	.....
Herkimer . . . . .	.....	425	.....	.....
Jefferson . . . . .	58,000	55,906	239,900	83,000
Kings . . . . .	6,100,010	5,445	2,350	24,705,200
Lewis . . . . .	.....	2,000	3,000	.....
Livingston . . . . .	.....	5,825	8,400	.....
Madison . . . . .	.....	14,627	.....	.....
Monroe . . . . .	977,600	16,435	569,800	750,000

*Statement of Property Exempt from Taxation—(Continued).*

Counties.	Charitable and reformatory institutions.	Property purchased with pension money.	Miscellaneous.	Government
Montgomery . . . . .	14,500	9,350	2,000	.....
New York . . . . .	27,812,500	.....	2,816,000	18,838,000
Niagara . . . . .	11,250	47,845	12,000	85 000
Oneida . . . . .	61,700	23,928	8,100	.....
Onondaga . . . . .	1,186,000	30,660	14,800	300,000
Ontario . . . . .	7,000	8,325	5,450	.....
Orange . . . . .	1,067,500	600	17,000	8,000
Orleans . . . . .	.....	6,650	20,000	.....
Oswego . . . . .	65,000	13,928	58,300	200
Otsego . . . . .	41,000	7,900	129,500	.....
Putnam . . . . .	1,000	.....	.....	.....
Queens . . . . .	41,500	600	38,000	1,000
Rensselaer . . . . .	668,700	300	849,484	350,000
Richmond . . . . .	13,000	.....	.....	525,000
Rockland . . . . .	.....	8,500	.....	.....
St. Lawrence . . . . .	8,000	.....	.....	.....
Saratoga . . . . .	23,000	.....	.....	.....
Schenectady . . . . .	.....	2,300	15,300	.....
Schoharie . . . . .	.....	9,810	.....	.....
Schuyler . . . . .	.....	3,224	.....	.....
Seneca . . . . .	66,000	69,265	19,000	120,000
Steuben . . . . .	70,000	29,115	360,564	.....
Suffolk . . . . .	10,000	9,800	152,830	174,800
Sullivan . . . . .	.....	.....	.....	.....
Tioga . . . . .	.....	10,860	.....	.....
Tompkins . . . . .	19,500	60,420	56,000	.....
Ulster . . . . .	110,600	7,500	.....	.....
Warren . . . . .	.....	4,925	13,750	.....
Washington . . . . .	.....	20,080	55,000	.....
Wayne . . . . .	125,000	5,440	800	.....
Westchester . . . . .	3,488,949	12,727	60,250	.....
Wyoming . . . . .	.....	5,745	4,000	.....
Yates . . . . .	.....	1,800	.....	.....
	<u>\$53,987,184</u>	<u>\$683,903</u>	<u>\$6,457,703</u>	<u>\$49,805,120</u>

**DOCUMENT NO. 67.**

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**MINORITY REPORT OF THE COMMITTEE ON CANALS.***To the Constitutional Convention:*

The undersigned, members of the Committee on Canals, believing that the present commercial supremacy of the State of New York is largely due to the construction of the canals connecting the great natural waterways of the State and nation, and that a continuance of the exalted position of this State and of its various ports among the commercial centers of the world will depend, in a large measure, upon the proper improvement and maintenance of its artificial waterways, do hereby respectfully present the following as a minority report:

First. They are of the opinion that it would be for the best interests of the State to further deepen the more important canals belonging to the State.

Secondly. The constitutional limitation of debt of the State to the sum of one million dollars should be removed, in so far as it might prevent the maintenance, repairs and improvement of the canals, consistent with the most effectual service they might, with reasonable expenditure, be made capable of.

Thirdly. It should be made incumbent upon the Legislature to provide at least for the restoration of the canals, so that they may be made to give at least the full service originally intended; for their immediate improvement with that end in view, and also for the lengthening of locks on the Erie and Oswego canals. Provisions should be made for the issuance of bonds sufficient for that purpose, the amount and character of which should be within just and proper limits, and which should be issued in a manner so as to spread the cost of improvement over a number of years.

Respectfully submitted.

NICOLL FLOYD.  
FREDERICK FRASER.  
ARTHUR D. WILLIAMS.  
ADOLPH C. HOTTENROTH.

While it is the opinion of the undersigned that the canals should be improved, it is their opinion also that the Legislature should have discretionary power as to the scope of the improvements, and to provide the necessary funds.

JAS. S. PORTER.  
STEPHEN S. BLAKE.  
G. W. CLARK.  
G. L. DANFORTH.  
W. H. BAKER.

## DOCUMENT NO. 68.

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Substitutes and Amendments Offered to Proposed Constitutional Amendment O., I. 390, P. 442, Relative to the Diversion of the Waters of the Niagara River.

Substitute offered by Mr. Barhite:

Proposed constitutional amendment to amend the Constitution by the addition of a new article relating to the diversion of the waters of Niagara river.

*The Delegates of the People of the State of New York, in Convention assembled, do propose as follows:*

The Constitution is hereby amended by the addition of the following new article:

### ARTICLE —.

Section —. The Legislature shall not hereafter grant any charter, license or privilege to divert from their natural channel the waters of the Niagara river or any portion thereof above Niagara Falls to any corporation, association, person or persons, except for sanitary, domestic or fire purposes, and such waters shall not be diverted for any other purpose, except by the corporations, associations, person or persons who have heretofore been licensed or granted the right to divert the waters of said river, or who may be now engaged in the actual diversion or use thereof for manufacturing or business purposes. All corporations, associations, person or persons who have heretofore been licensed or granted the right to divert the waters of said river, or who may be now engaged in the actual diversion or use thereof for manufacturing or business purposes without express license or grant, and all corporations, associations, person or persons who may hereafter be granted the right to divert the same for sanitary, domestic or fire purposes, shall be under the direction and control of the Commissioners of the Land Office, who may, from time to time, after due notice to the Commissioners of the State Reservation at Niagara, and to the corporations, associations, person or persons having grants or licenses to divert, or now actually engaged in the diversion or use of said waters, make such orders and give such directions in regard to the diversion and use of said waters as shall be just and equitable. But this section shall not be so construed as to affirm, enlarge or impair the charter of any such corporation, association or persons, or to affirm, enlarge or impair any right,

privilege or license under which they, or either of them, may claim to divert the waters of said river.

Substitute offered by Mr. Root:

The Legislature shall not hereafter grant the right to divert from their natural channel any of the waters of the Niagara river above Niagara Falls, except for sanitary, domestic or fire purposes; and such waters shall not be diverted for any other purpose, except by the corporations, associations or persons who may now be expressly authorized to divert the same, or who were on the 1st day of September, 1894, engaged in the actual diversion thereof for manufacturing or business purposes.

All corporations, associations and persons to whom the right to divert such waters has heretofore been granted, or who were, on the 1st day of September, 1894, engaged in the actual diversion thereof, for manufacturing or business purposes, or to whom the right to divert the same for sanitary, domestic or fire purposes may be hereafter granted, shall be under the direction and control of the Commissioners of the Land Office, who may, from time to time, after due notice to the Commissioners of the State Reservation at Niagara, and to the parties interested, make such orders and give such directions in regard to the diversion and use of such waters as shall seem just and equitable.

This section shall not be so construed as to affirm, enlarge or impair the charter of any such corporation, association or persons, or to affirm, enlarge or impair any right, privilege or license under which they, or either of them, may claim to divert the waters of said river.

Amendment offered by Mr. Dean:

Striking out all the proposed substitute after the word "purposes" in line 5, so that it shall read:

"The Legislature shall not hereafter grant the right to divert from their natural channel any of the waters of the Niagara river, above Niagara Falls, except for sanitary, domestic or fire purposes."

Substitute offered by Mr. Marshall:

The right to divert the waters of the Niagara river, above Niagara Falls, pursuant to any grant or license heretofore or hereafter created, shall be regulated by and be under the direction and control of the Commissioners of the Land Office. This section shall not be deemed to recognize or affect any privilege or license under which any person or corporation may now claim the right to divert the waters of said river.

**DOCUMENT NO. 69.**

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Memorial of the Various Farmers' Associations of the State of New York Asking the Incorporation into the Constitution of Proposed Amendments as to Taxation, Railroads, Transfer of Canals, General Orders Nos. 62, 71 and O., I. 67, Ordered Printed and Placed on the Files of Members.

We, the farmers and taxpayers of the State of New York, in convention assembled, at Agricultural Hall, in the city of Albany, on the 4th day of September, 1894, do present the following memorial to the Constitutional Convention now in session, and respectfully ask for the following amendments to the Constitution, now before that body.

It is well known that the agricultural interests of the country are in a depressed condition; especially is this true in the Empire State. Our farms, located only a few miles from market, are, in many instances, not paying expenses. Land values are, therefore, constantly declining, so much so that our farms, when thrown upon the market, will not, in many cases, bring the cost of the improvements thereon; while bonds and mortgages, and even many of our corporate stocks are at or above par. This abnormal condition, in our judgment, results mainly from two causes:

First. From our present system of tax assessments. Land which represents only one-fourth of the wealth of the State, now bears ten-elevenths of the expenses of government; while the vast personal, which represents three-fourths of the taxable property of the State, bears only one-eleventh.

We have, therefore, practically reached the Henry George single-tax millennium, and what is the result? We answer, a general unrest, a depreciation of land values, except in the great cities, and

We hold that equal taxation is just and fundamental, and should, therefore, be in the Constitution. Were our taxes levied equally upon all taxable property, the normal relation between real and personal property would be restored. It would also reduce our land tax seventy-five per cent, and by so much as it reduced the tax on our farm lands, so much it would increase the value of our farms.

We, therefore, ask that O., I. 389, general order No. 62, be added to the Constitution that provides that all property, whether real



or personal, shall be taxed at its full market value, except that which is already exempt by law.

This would settle, in the public minds, our system of taxation, and put a stop to the present discussion of the anarchistic single-tax fallacy which has already done much to unsettle our real estate values.

Second. The second cause in the decline of our agricultural prosperity results from our present system of exorbitant local freight rates. The actual cost of transportation on our main lines of railroad is only one mill a mile per ton. The main roads are even now advertising to bring produce from St. Paul to New York, a distance of nearly 1,500 miles, for five cents per 100 pounds, while the same roads are charging us from fifteen to twenty cents per 100 pounds on distances often less than 100 miles, making a difference of 100 per cent. Our roads are chartered as common carriers, and, as such, have no right to make discriminations so unjust to the people. It is evident that such a system must be ruinous to all local trade. Give the farmers of this State a just system of *pro rata* freight rates, and we can successfully compete with the farmers of the west; without it neither skill or economy can save us from ultimate bankruptcy.

We, therefore, ask this Convention to favorably consider the Cornwell amendment, O., I. 363, general order No. 71, which provides for a clause in the Constitution that shall establish a system of *pro rata* freight rates under the advisement of the Railroad Commissioners, which shall be so arranged that no short haul shall equal in price any longer haul.

We also ask this Convention to pass the McDonough amendment, O., I. 67, so far as it relates to the government permitting the people to transfer our State canals, through the Legislature, to the general government whenever desired, upon such terms as may be acceptable to the people.

We are aware that an influential canal trust is making every effort possible to fasten forever upon the State the incubus of a gigantic canal tax.

The people are tired of being taxed for the maintenance of a canal when less than one-fourth of its tonnage comes from this State. Our canals have, therefore, practically become a national waterway, benefiting other States more than our own, and all restrictions should be removed that prevent the general government from using and maintaining the same as ship canals.

In our judgment, the march of events makes a ship canal to connect the Great Lakes with the sea a logical sequence, and it

is for this Convention to decide whether the great west shall be connected by it with the east through New Orleans, or Baltimore, or the city of New York.

We, therefore, deem it the part of wisdom for this Convention to remove all impediments through the adoption of the McDonough amendment, that shall prevent the consummation of a national waterway through the Empire State, and thus, with one act, not only make Greater New York the metropolis of the continent and the grandest seaport of the world, but also give to the people of this State the benefit of a free canal without the burden of taxation or the costly manipulations of an unscrupulous canal ring.

In conclusion, as the federated body of representatives of the farmers of the State, which includes the Grange, Patrons of Industry, clubs, leagues and alliances, we commend this Convention for all the efforts it has made in the way of true reform, and especially in the judiciary department, by which the law that pensioned our judges has been annulled, thereby saving to the taxpayers of the State nearly half a million annually, and also rebuking the growing and pernicious custom of class legislation.

(Signed) H. S. AMBLER,  
N. G. SPALDING,  
DAVID STRAIN,  
W. H. SLINGERLAND,  
J. P. PARENT,  
HOWLAND FISH,  
F. ONDERDONK,  
J. H. BROOK,  
J. MENHORT,  
A. GOVE,  
DAVID BENNETT,  
J. P. VAN NESS,  
H. D. ULINE,  
J. G. KINNARD,  
*Committee.*

## DOCUMENT NO. 72.

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THE PROPOSED REVISED CONSTITUTION, AS ADOPTED BY THE CONSTITUTIONAL CONVENTION, AT THE CITY OF ALBANY, SEPTEMBER 28, 1894, WITH SCHEDULE SHOWING SOURCE OF EACH ARTICLE AND SECTION.

*We, the people of the State of New York, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this Constitution.*

### ARTICLE I.

SECTION 1. No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

§ 2. The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law.

§ 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

§ 4. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

§ 5. Excessive bail shall not be required nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

§ 6. No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this State may keep with the consent of Congress in time of peace, and in cases of petit larceny, under the regulation of the Legislature), unless on presentment or indictment of a grand jury, and in any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or prop-

## Article I — Continued.

erty without due process of law; nor shall private property be taken for public use, without just compensation.

§ 7. When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited. General laws may be passed permitting the owners or occupants of agricultural lands to construct and maintain for the drainage thereof, necessary drains, ditches and dykes upon the lands of others, under proper restrictions and with just compensation, but no special laws shall be enacted for such purposes.

§ 8. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

§ 9. No law shall be passed abridging the right of the people peaceably to assemble and to petition the government, or any department thereof; nor shall any divorce be granted otherwise than by due judicial proceedings; nor shall any lottery or the sale of lottery tickets, pool-selling, bookmaking, or any other kind of gambling hereafter be authorized or allowed within this State; and the Legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section.

§ 10. The people of this State, in their right of sovereignty are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the State; and all lands the title to which shall fail from a defect of heirs, shall revert or escheat to the people.

§ 11. All feudal tenures of every description, with all their incidents, are declared to be abolished, saving, however, all rents and services certain which at any time heretofore have been lawfully created or reserved.

## Article I — Continued.

§ 12. All lands within this State are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates.

§ 13. No lease or grant of agricultural land, for a longer period than twelve years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid.

§ 14. All fines, quarter-sales, or other like restraints upon alienation, reserved in any grant of land hereafter to be made, shall be void.

§ 15. No purchase or contract for the sale of lands in this State, made since the fourteenth day of October, one thousand seven hundred and seventy-five; or which may hereafter be made, of, or with the Indians, shall be valid, unless made under the authority, and with the consent of the Legislature.

§ 16. Such parts of the common law, and of the acts of the Legislature of the Colony of New York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the Congress of the said colony, and of the Convention of the State of New York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or been repealed or altered; and such acts of the Legislature of this State as are now in force, shall be and continue the law of this State, subject to such alterations as the Legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this Constitution, are hereby abrogated.

§ 17. All grants of land within this State, made by the king of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this Constitution shall affect any grants of land within this State, made by the authority of the said king or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this State, or by persons acting under its authority; or shall impair the obligation of any debts contracted by the State, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

§ 18. The right of action now existing to recover damages for injuries resulting in death, shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation.

Article I — Continued.

Revised Art.	Const. Sec.		Present Art.	Const. Sec.
I	1	.....	I	1
I	2	.....	I	2
I	3	.....	I	3
I	4	.....	I	4
I	5	.....	I	5
I	6	.....	I	6
I	7	amending.....	I	7
I	8	.....	I	8
I	9	amending.....	I	10
I	10	.....	I	11
I	11	.....	I	12
I	12	.....	I	13
I	13	.....	I	14
I	14	.....	I	15
I	15	.....	I	16
I	16	amending.....	I	17
I	17	.....	I	18
I	18	.....	New	

ARTICLE II.

SECTION I. Every male citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this State one year next preceding an election, and for the last four months a resident of the county, and for the last thirty days a resident of the election district in which he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people; provided that in time of war no elector in the actual military service of the State, or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from such election district; and the Legislature shall have power to provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.

§ 2. No person who shall receive, accept, or offer to receive, or pay, offer or promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election,

## Article II — Continued.

shall vote at such election; and upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his vote, shall swear or affirm, before such officers that he has not received or offered, does not expect to receive, has not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at such election, and has not made any promise to influence the giving or withholding of any such vote, nor made or become directly or indirectly interested in any bet or wager depending upon the result of such election. The Legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.

§ 3. For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum, or institution wholly or partly supported at public expense or by charity; nor while confined in any public prison.

§ 4. Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established, and for the registration of voters; which registration shall be completed at least ten days before each election. Such registration shall not be required for town and village elections except by express provision of law. In cities and villages having five thousand inhabitants or more, according to the last preceding State enumeration of inhabitants, voters shall be registered upon personal application only; but voters not residing in such cities or villages shall not be required to apply in person for registration at the first meeting of the officers having charge of the registry of voters.

§ 5. All elections by the citizens, except for such town officers as may by law be directed to be otherwise chosen, shall be by ballot, or by such other method as may be prescribed by law, provided that secrecy in voting be preserved.

§ 6. All laws creating, regulating or affecting boards or officers charged with the duty of registering voters, or of distributing ballots at the polls to voters, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next preceding that for which such

Article II — Continued.

boards or officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed or elected in such manner, and upon the nomination of such representatives of said parties respectively, as the Legislature may direct. Existing laws on this subject shall continue until the Legislature shall otherwise provide. This section shall not apply to town meetings, or to village elections.

Revised Const. Art. Sec.		Present Const. Art. Sec.
II 1	amending.....	II 1
II 2	revising .....	II 2
II 3	amending.....	II 3
II 4	amending . . . . .	II 4
II 5	amending . . . . .	II 5
II 6	.....	New

ARTICLE III.

SECTION 1. The legislative power of this State shall be vested in the Senate and Assembly.

§ 2. The Senate shall consist of fifty members, except as herein-after provided. The Senators elected in the year one thousand eight hundred and ninety-five shall hold their offices for three years, and their successors shall be chosen for two years. The Assembly shall consist of one hundred and fifty members who shall be chosen for one year.

§ 3. The State shall be divided into fifty districts to be called Senate districts, each of which shall choose one Senator. The districts shall be numbered from one to fifty, inclusive.

District number one (1) shall consist of the counties of Suffolk and Richmond.

District number two (2) shall consist of the county of Queens.

District number three (3) shall consist of that part of the county of Kings composing the first, second, third, fourth, fifth and sixth wards of the city of Brooklyn.

District number four (4) shall consist of that part of the county of Kings comprising the seventh, thirteenth, nineteenth and twenty-first wards of the city of Brooklyn.

District number five (5) shall consist of that part of the county of Kings comprising the eighth, tenth, twelfth and thirtieth wards of the city of Brooklyn, and the ward of the city of Brooklyn which was formerly the town of Gravesend.



## Article III — Continued.

District number six (6) shall consist of that part of the county of Kings comprising the ninth, eleventh, twentieth and twenty-second wards of the city of Brooklyn.

District number seven (7) shall consist of that part of the county of Kings comprising the fourteenth, fifteenth, sixteenth and seventeenth wards of the city of Brooklyn.

District number eight (8) shall consist of that part of the county of Kings comprising the twenty-third, twenty-fourth, twenty-fifth and twenty-ninth wards of the city of Brooklyn, and the town of Flatlands.

District number nine (9) shall consist of that part of the county of Kings comprising the eighteenth, twenty-sixth, twenty-seventh and twenty-eighth wards of the city of Brooklyn.

District number ten (10) shall consist of that part of the county of New York within and bounded by a line beginning at Canal street and the Hudson river, and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Canal street, the Bowery, Division street, Grand street and Jackson street, to the East river and thence around the southern end of Manhattan Island, to the place of beginning, and also Governor's, Bedlow's and Ellis islands.

District number eleven (11) shall consist of that part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the junction of Broadway and Canal street, and running thence along Broadway, Fourth street, the Bowery and Third avenue, St. Mark's place, Avenue A, Seventh street, Avenue B, Clinton street, Rivington street, Norfolk street, Division street, Bowery and Canal street, to the place of beginning.

District number twelve (12) shall consist of that part of the county of New York lying north of districts numbers ten and eleven and within and bounded by a line beginning at Jackson street and the East river, and running thence through Jackson street, Grand street, Division street, Norfolk street, Rivington street, Clinton street, Avenue B, Seventh street, Avenue A, St. Mark's place, Third avenue, East Fourteenth street to the East river and along the East river, to the place of beginning.

District number thirteen (13) shall consist of that part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the Hudson river at the foot of Canal street, and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome Street, Sullivan street, Spring street, Broadway, Fourth street, the Bowery and Third

## Article III — Continued.

avenue, Fourteenth street, Sixth avenue, West Fifteenth street, Seventh avenue, West Nineteenth street, Eighth avenue, West Twentieth street, and the Hudson river, to the place of beginning.

District number fourteen (14) shall consist of that part of the county of New York lying north of districts numbers twelve and thirteen, and within and bounded by a line beginning at East Fourteenth street and the East river, and running thence along East Fourteenth street, Irving place, East Nineteenth street, Third avenue, East Twenty-third street, Lexington avenue, East Fifty-third street, Third avenue, East Fifty-second street, and the East river to the place of beginning.

District number fifteen (15) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at the junction of West Fourteenth street and Sixth avenue, and running thence along Sixth avenue, West Fifteenth street, Seventh avenue, West Fortieth street, Eighth avenue, and the transverse road across Central Park at Ninety-seventh street, Fifth avenue, East Ninety-sixth street, Lexington avenue, East Twenty-third street, Third avenue, East Nineteenth street, Irving place and Fourteenth street, to the place of beginning.

District number sixteen (16) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at Seventh avenue and West Nineteenth street, and running thence along West Nineteenth street, Eighth avenue, West Twentieth street, the Hudson river, West Forty-sixth street, Tenth avenue, West Forty-third street, Eighth avenue, West Fortieth street and Seventh avenue, to the place of beginning.

District number seventeen (17) shall consist of that part of the county of New York lying north of district number sixteen, and within and bounded by a line beginning at the junction of Eighth avenue and West Forty-third street, and running thence along West Forty-third street, Tenth avenue, West Forty-sixth street, the Hudson river, West Eighty-ninth street, Tenth or Amsterdam avenue, West Eighty-sixth street, Ninth or Columbus avenue, West Eighty-first street and Eighth avenue, to the place of beginning.

District number eighteen (18) shall consist of that part of the county of New York lying north of district number fourteen, and within and bounded by a line beginning at the junction of East Fifty-second street and the East river, and running thence along East Fifty-second street, Third avenue, East Fifty-third street, Lexington avenue, East Eighty-fourth street, Second avenue East Eighty-

## Article III — Continued.

third street and the East river, to the place of beginning; and also Blackwell's Island.

District number nineteen (19) shall consist of that part of the county of New York lying north of district number seventeen, and within and bounded by a line beginning at West Eighty-ninth street and the Hudson river, and running thence along the Hudson river and Spuyten Duyvil creek around the northern end of Manhattan island; thence southerly along the Harlem river to the north end of Fifth avenue; thence along Fifth avenue, East One Hundred and Twenty-ninth street, Fourth or Park avenue, East One Hundred and Tenth street, Fifth avenue, the transverse road across Central Park at Ninety-seventh street, Eighth avenue, West Eighty-first street, Ninth or Columbus avenue, West Eighty-sixth street, Tenth or Amsterdam avenue, and West Eighty-ninth street, to the place of beginning.

District number twenty (20) shall consist of that part of the county of New York lying north of districts numbers eighteen and fifteen, and within and bounded by a line beginning at East Eighty-third street and the East river, running thence through East Eighty-third street, Second avenue, East Eighty-fourth street, Lexington avenue, East Ninety-sixth street, Fifth avenue, East One Hundred and Tenth street, Fourth or Park avenue, East One Hundred and Nineteenth street to the Harlem river, and along the Harlem and East rivers to the place of beginning; and also Randall's Island and Ward's Island.

All of the above districts in the county of New York bounded upon or along the boundary waters of the county, shall be deemed to extend to the county line.

District number twenty-one (21) shall consist of that part of the county of New York lying north of districts numbers nineteen and twenty, within and bounded by a line beginning at East One Hundred and Nineteenth street and the Harlem river, and running thence along East One Hundred and Nineteenth street, Fourth or Park avenue, One Hundred and Twenty-ninth street, Fifth avenue and the Harlem river, to the place of beginning; and all that part of the county of New York not hereinbefore described.

District number twenty-two (22) shall consist of the county of Westchester.

District number twenty-three (23) shall consist of the counties of Orange and Rockland.

District number twenty-four (24) shall consist of the counties of Dutchess, Columbia and Putnam.

## Article III — Continued.

District number twenty-five (25) shall consist of the counties of Ulster and Greene.

District number twenty-six (26) shall consist of the counties of Delaware, Chenango and Sullivan.

District number twenty-seven (27) shall consist of the counties of Montgomery, Fulton, Hamilton and Schoharie.

District number twenty-eight (28) shall consist of the counties of Saratoga, Schenectady and Washington.

District number twenty-nine (29) shall consist of the county of Albany.

District number thirty (30) shall consist of the county of Rensselaer.

District number thirty-one (31) shall consist of the counties of Clinton, Essex and Warren.

District number thirty-two (32) shall consist of the counties of St. Lawrence and Franklin.

District number thirty-three (33) shall consist of the counties of Otsego and Herkimer.

District number thirty-four (34) shall consist of the county of Oneida.

District number thirty-five (35) shall consist of the counties of Jefferson and Lewis.

District number thirty-six (36) shall consist of the county of Onondaga.

District number thirty-seven (37) shall consist of the counties of Oswego and Madison.

District number thirty-eight (38) shall consist of the counties of Broome, Cortland and Tioga.

District number thirty-nine (39) shall consist of the counties of Cayuga and Seneca.

District number forty (40) shall consist of the counties of Chemung, Tompkins and Schuyler.

District number forty-one (41) shall consist of the counties of Steuben and Yates.

District number forty-two (42) shall consist of the counties of Ontario and Wayne.

District number forty-three (43) shall consist of that part of the county of Monroe comprising the towns of Brighton, Henrietta, Irondequoit, Mendon, Penfield, Perinton, Pittsford, Rush and Webster, and the fourth, sixth, seventh, eighth, twelfth, thirteenth, fourteenth, sixteenth, seventeenth and eighteenth wards of the city of Rochester, as at present constituted.

## Article III — Continued.

District number forty-four (44) shall consist of that part of the county of Monroe comprising the towns of Chili, Clarkson, Gates, Greece, Hamlin, Ogden, Parma, Riga, Sweden and Wheatland, and the first, second, third, fifth, ninth, tenth, eleventh, fifteenth, nineteenth and twentieth wards of the city of Rochester, as at present constituted.

District number forty-five (45) shall consist of the counties of Niagara, Genesee and Orleans.

District number forty-six (46) shall consist of the counties of Allegany, Livingston and Wyoming.

District number forty-seven (47) shall consist of that part of the county of Erie comprising the first, second, third, sixth, fifteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth wards of the city of Buffalo, as at present constituted.

District number forty-eight (48) shall consist of that part of the county of Erie comprising the fourth, fifth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth and sixteenth wards of the city of Buffalo, as at present constituted.

District number forty-nine (49) shall consist of that part of the county of Erie comprising the seventeenth, eighteenth and twenty-fifth wards of the city of Buffalo, as at present constituted; and all the remainder of the said county of Erie not hereinbefore described.

District number fifty (50) shall consist of the counties of Chautauqua and Cattaraugus.

§ 4. An enumeration of the inhabitants of the State shall be taken under the direction of the Secretary of State, during the months of May and June, in the year one thousand nine hundred and five, and in the same months every tenth year thereafter; and the said districts shall be so altered by the Legislature at the first regular session after the return of every enumeration, that each Senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered until the return of another enumeration, and shall at all times, consist of contiguous territory, and no county shall be divided in the formation of a Senate district, except to make two or more Senate districts wholly in such county. No town, and no block in a city inclosed by streets or public ways, shall be divided in the formation of Senate districts; nor shall any district contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed

## Article III — Continued.

as to make said districts most nearly equal in number of inhabitants, excluding aliens.

No county shall have four or more Senators unless it shall have a full ratio for each Senator. No county shall have more than one-third of all the Senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the Senators.

The ratio for apportioning Senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the Senate shall always be composed of fifty members, except that if any county having three or more Senators at the time of any apportionment shall be entitled on such ratio to an additional Senator or Senators, such additional Senator or Senators shall be given to such county in addition to the fifty Senators, and the whole number of Senators shall be increased to that extent.

§ 5. The Members of the Assembly shall be chosen by single districts, and shall be apportioned by the Legislature at the first regular session after the return of every enumeration among the several counties of the State, as nearly as may be according to the number of their respective inhabitants, excluding aliens. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one Member of Assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. But the Legislature may abolish the said county of Hamilton and annex the territory thereof to some other county or counties.

The quotient obtained by dividing the whole number of inhabitants of the State, excluding aliens, by the number of Members of Assembly, shall be the ratio for apportionment, which shall be made as follows: One Member of Assembly shall be apportioned to every county, including Fulton and Hamilton as one county, containing less than the ratio and one-half over. Two members shall be apportioned to every other county. The remaining Members of Assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders in the order thereof respectively. No county shall have more Members of Assembly than a county having a greater number of inhabitants, excluding aliens.

## Article III — Continued.

Until after the next enumeration, Members of the Assembly shall be apportioned to the several counties as follows: Albany county, four members; Allegany county, one member; Broome county, two members; Cattaraugus county, two members; Cayuga county, two members; Chautauqua county, two members; Chemung county, one member; Chenango county, one member; Clinton county, one member; Columbia county, one member; Cortland county, one member; Delaware county, one member; Dutchess county, two members; Erie county, eight members; Essex county, one member; Franklin county, one member; Fulton and Hamilton counties, one member; Genesee county, one member; Greene county, one member; Herkimer county, one member; Jefferson county, two members; Kings county, twenty-one members; Lewis county, one member; Livingston county, one member; Madison county, one member; Monroe county, four members; Montgomery county, one member; New York county, thirty-five members; Niagara county, two members; Oneida county, three members; Onondaga county, four members; Ontario county, one member; Orange county, two members; Orleans county, one member; Oswego county, two members; Otsego county, one member; Putnam county, one member; Queens county, three members; Rensselaer county, three members; Richmond county, one member; Rockland county, one member; St. Lawrence county, two members; Saratoga county, one member; Schenectady county, one member; Schoharie county, one member; Schuyler county, one member; Seneca county, one member; Steuben county, two members; Suffolk county, two members; Sullivan county, one member; Tioga county, one member; Tompkins county, one member; Ulster county, two members; Warren county, one member; Washington county, one member; Wayne county, one member; Westchester county, three members; Wyoming county, one member, and Yates county, one member.

In any county entitled to more than one member the board of supervisors, and in any city embracing an entire county and having no board of supervisors, the common council, or, if there be none, the body exercising the powers of a common council, shall assemble on the second Tuesday of June, one thousand eight hundred and ninety-five, and at such times as the Legislature making an apportionment shall prescribe, and divide such counties into Assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory in as compact form as practicable, each of which shall be wholly within

## Article III — Continued.

a Senate district formed under the same apportionment, equal to the number of Members of Assembly to which such county shall be entitled, and shall cause to be filed in the office of the Secretary of State and of the clerk of such county, a description of such districts, specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the last preceding enumeration; and such apportionment of districts shall remain unaltered until another enumeration shall be made, as herein provided; but said division of the city of Brooklyn and the county of Kings to be made on the second Tuesday of June, one thousand eight hundred and ninety-five, shall be made by the common council of said city and the board of supervisors of said county, assembled in joint session. In counties having more than one Senate district, the same number of Assembly districts shall be put in each Senate district, unless the Assembly districts cannot be evenly divided among the Senate districts of any county, in which case one more Assembly district shall be put in the Senate district in such county having the largest, or one less Assembly district shall be put in the Senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. No town, and no block in a city inclosed by streets or public ways, shall be divided in the formation of Assembly districts nor shall any district contain a greater excess in population over an adjoining district in the same Senate district, than the population of a town or block therein adjoining such Assembly district. Towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens; but in the division of cities under the first apportionment, regard shall be had to the number of inhabitants, excluding aliens, of the election districts according to the State enumeration of one thousand eight hundred and ninety-two, so far as may be, instead of blocks. Nothing in this section shall prevent the division, at any time, of counties and towns, and the erection of new towns by the Legislature.

An apportionment by the Legislature, or other body, shall be subject to review by the Supreme Court, at the suit of any citizen, under such reasonable regulations as the Legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same.



## Article III — Continued.

§ 6. Each member of the Legislature shall receive for his services an annual salary of one thousand five hundred dollars. The members of either house shall also receive the sum of one dollar for every ten miles they shall travel in going to and returning from their place of meeting, once in each session, on the most usual route. Senators, when the Senate alone is convened in extraordinary session, or when serving as members of the Court for the Trial of Impeachments, and such Members of the Assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional allowance of ten dollars a day.

§ 7. No member of the Legislature shall receive any civil appointment within this State, or the Senate of the United States, from the Governor, the Governor and Senate, or from the Legislature, or from any city government, during the time for which he shall have been elected; and all such appointments and all votes given for any such member for any such office or appointment shall be void.

§ 8. No person shall be eligible to the Legislature, who, at the time of his election, is, or within one hundred days previous thereto, has been, a Member of Congress, a civil or military officer under the United States, or an officer under any city government. And if any person shall, after his election as a member of the Legislature, be elected to Congress, or appointed to any office, civil or military, under the government of the United States, or under any city government, his acceptance thereof shall vacate his seat.

§ 9. The election of Senators and Members of Assembly, pursuant to the provisions of this Constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the Legislature.

§ 10. A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members; shall choose its own officers; and the Senate shall choose a temporary president to preside in case of the absence or impeachment of the Lieutenant-Governor, or when he shall refuse to act as president, or shall act as Governor.

§ 11. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

Article III — Continued.

§ 12. For any speech or debate in either house of the Legislature, the members shall not be questioned in any other place.

§ 13. Any bill may originate in either house of the Legislature, and all bills passed by one house may be amended by the other.

§ 14. The enacting clause of all bills shall be, "The People of the State of New York, represented in Senate and Assembly, do enact as follows," and no law shall be enacted except by bill.

§ 15. No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the Governor, or the acting Governor, shall have certified to the necessity of its immediate passage, under his hand and the seal of the State; nor shall any bill be passed or become a law, except by the assent of a majority of the members elected to each branch of the Legislature; and upon the last reading of a bill, no amendment thereof shall be allowed, and the question upon its final passage shall be taken immediately thereafter, and the yeas and nays entered on the journal.

§ 16. No private or local bill, which may be passed by the Legislature, shall embrace more than one subject, and that shall be expressed in the title.

§ 17. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act.

§ 18. The Legislature shall not pass a private or local bill in any of the following cases:

Changing the names of persons.

Laying out, opening, altering, working or discontinuing roads, highways or alleys, or for draining swamps or other low lands.

Locating or changing county seats.

Providing for changes of venue in civil or criminal cases.

Incorporating villages.

Providing for election of members of boards of supervisors.

Selecting, drawing, summoning or impaneling grand or petit jurors.

Regulating the rate of interest on money.

The opening and conducting of elections or designating places of voting.

Creating, increasing or decreasing fees, percentage or allowances of public officers, during the term for which said officers are elected or appointed.

## Article III — Continued.

Granting to any corporation, association or individual the right to lay down railroad tracks.

Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever.

Providing for building bridges, and chartering companies for such purposes, except on the Hudson river below Waterford, and on the East river, or over the waters forming a part of the boundaries of the State.

The Legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases which in its judgment may be provided for by general laws. But no law shall authorize the construction or operation of a street railroad, except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent, also, of the local authorities having the control of, that portion of a street or highway upon which it is proposed to construct or operate such railroad, be first obtained, or in case the consent of such property owners cannot be obtained, the Appellate Division of the Supreme Court, in the department in which it is proposed to be constructed, may, upon application, appoint three commissioners who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.

§ 19. The Legislature shall neither audit nor allow any private claim or account against the State, but may appropriate money to pay such claims as shall have been audited and allowed according to law.

§ 20. The assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes.

§ 21. No money shall ever be paid out of the treasury of this State, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such an appropriation act; and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

§ 22. No provision or enactment shall be embraced in the annual appropriation or supply bill, unless it relates specifically to some

## Article III — Continued.

particular appropriation in the bill; and any such provision or enactment shall be limited in its operation to such appropriation.

§ 23. Sections seventeen and eighteen of this article shall not apply to any bill, or the amendments of any bill, which shall be reported to the Legislature by commissioners who have been appointed pursuant to law to revise the statutes.

§ 24. Every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.

§ 25. On the final passage, in either house of the Legislature, of any act which imposes, continues or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation of public or trust money or property, or releases, discharges or commutes any claim or demand of the State, the question shall be taken by yeas and nays, which shall be duly entered upon the journals, and three-fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein.

§ 26. There shall be in the several counties, except in cities whose boundaries are the same as those of the county, a board of supervisors, to be composed of such members and elected in such manner, and for such period, as is or may be provided by law. In any such city the duties and powers of a board of supervisors may be devolved upon the common council or board of aldermen thereof.

§ 27. The Legislature shall, by general laws, confer upon the boards of supervisors of the several counties of the State such further powers of local legislation and administration as the Legislature may from time to time deem expedient.

§ 28. The Legislature shall not, nor shall the common council of any city, nor any board of supervisors, grant any extra compensation to any public officer, servant, agent or contractor.

§ 29. The Legislature shall, by law, provide for the occupation and employment of prisoners sentenced to the several State prisons, penitentiaries, jails and reformatories in the State; and on and after the first day of January, in the year one thousand eight hundred and ninety-seven, no person in any such prison, penitentiary, jail or reformatory, shall be required or allowed to work, while under sentence thereto, at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be farmed out, contracted, given or sold to any person, firm, association or corporation. This section shall not be construed to prevent the Legislature from providing that convicts may work for, and that the

## Article III — Continued.

products of their labor may be disposed of to, the State or any political division thereof, or for or to any public institution owned or managed and controlled by the State, or any political division thereof.

Revised Art.	Const. Sec.		Present Art.	Const. Sec.
III	1	.....	III	1
III	2	.....	New	
III	3	.....	New	
III	4	.....	New	
III	5	.....	New	
III	6	.....	III	6
III	7	.....	III	7
III	8	.....	III	8
III	9	.....	III	9
III	10	amending.....	III	10
III	11	.....	III	11
III	12	.....	III	12
III	13	.....	III	13
III	14	.....	III	14
III	15	amending.....	III	15
III	16	.....	III	16
III	17	.....	III	17
III	18	revising.....	III	18
III	19	.....	III	19
III	20	.....	I	9
III	21	.....	VII	8
III	22	.....	New	
III	23	.....	III	25
III	24	.....	III	20
III	25	.....	III	21
III	26	.....	III	22
III	27	.....	III	23
III	28	.....	III	24
III	29	.....	New	

## ARTICLE IV.

SECTION 1. The executive power shall be vested in a Governor, who shall hold his office for two years; a Lieutenant-Governor shall be chosen at the same time, and for the same term. The Governor and Lieutenant-Governor elected next preceding the time when this section shall take effect, shall hold office until and including the thirty-first day of December, one thousand eight hundred and ninety-six, and their successors shall be chosen at the general election in that year.

§ 2. No person shall be eligible to the office of Governor or Lieutenant-Governor, except a citizen of the United States, of the age

## Article IV — Continued.

of not less than thirty years, and who shall have been five years next preceding his election a resident of this State.

§ 3. The Governor and Lieutenant-Governor shall be elected at the times and places of choosing Members of the Assembly. The persons respectively having the highest number of votes for Governor and Lieutenant-Governor shall be elected; but in case two or more shall have an equal and the highest number of votes for Governor or for Lieutenant-Governor, the two houses of the Legislature, at its next annual session, shall forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for Governor or Lieutenant-Governor.

§ 4. The Governor shall be commander-in-chief of the military and naval forces of the State. He shall have power to convene the Legislature, or the Senate only, on extraordinary occasions. At extraordinary sessions no subject shall be acted upon, except such as the Governor may recommend for consideration. He shall communicate by message to the Legislature at every session the condition of the State, and recommend such matters to it as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the Legislature, and shall take care that the laws are faithfully executed. He shall receive for his services an annual salary of ten thousand dollars, and there shall be provided for his use a suitable and furnished executive residence.

§ 5. The Governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the Legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

§ 6. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for

## Article IV — Continued.

the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State, in time of war, at the head of the military force thereof, he shall continue commander-in-chief of all the military force of the State.

§ 7. The Lieutenant-Governor shall possess the same qualifications of eligibility for office as the Governor. He shall be President of the Senate, but shall have only a casting vote therein. If during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President of the Senate shall act as Governor until the vacancy be filled or the disability shall cease; and if the President of the Senate for any of the above causes shall become incapable of performing the duties pertaining to the office of Governor, the Speaker of the Assembly shall act as Governor until the vacancy be filled or the disability shall cease.

§ 8. The Lieutenant-Governor shall receive for his services an annual salary of five thousand dollars, and shall not receive or be entitled to any other compensation, fee or perquisite, for any duty or service he may be required to perform by the Constitution or by law.

§ 9. Every bill which shall have passed the Senate and Assembly shall, before it becomes a law, be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated, which shall enter the objections at large on the journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members elected to that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members elected to that house, it shall become a law, notwithstanding the objections of the Governor. In all such cases, the votes in both houses shall be determined by the yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the Governor. No bill shall become a law after the final adjournment of the Legislature, unless approved by the Governor within thirty days after such

Article IV — Continued.

adjournment. If any bill presented to the Governor contain several items of appropriation of money, he may object to one or more of such items while approving of the other portion of the bill. In such case, he shall append to the bill, at the time of signing it, a statement of the items to which he objects; and the appropriation so objected to shall not take effect. If the Legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If on reconsideration one or more of such items be approved by two-thirds of the members elected to each house, the same shall be part of the law, notwithstanding the objections of the Governor. All the provisions of this section, in relation to bills not approved by the Governor, shall apply in cases in which he shall withhold his approval from any item or items contained in a bill appropriating money.

Revised Art.	Const. Sec.		Present Art.	Const. Sec.
IV	1	amending.....	IV	1
IV	2	.....	IV	2
IV	3	.....	IV	3
IV	4	.....	IV	4
IV	5	.....	IV	5
IV	6	.....	IV	6
IV	7	amending.....	IV	7
IV	8	.....	IV	8
IV	9	.....	IV	9

ARTICLE V.

SECTION 1. The Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor shall be chosen at a general election, at the times and places of electing the Governor and Lieutenant-Governor and shall hold their offices for two years, except as provided in section two of this article. Each of the officers in this article named, excepting the Speaker of the Assembly, shall at stated times during his continuance in office, receive for his services a compensation which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive to his use any fees or perquisites of office or other compensation. No person shall be elected to the office of State Engineer and Surveyor who is not a practical civil engineer.

§ 2. The first election of Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor, pursuant



## Article V — Continued.

to this article, shall be held in the year one thousand eight hundred and ninety-five, and their terms of office shall begin on the first day of January following, and shall be for three years. At the general election in the year one thousand eight hundred and ninety-eight, and every two years thereafter, their successors shall be chosen for the term of two years.

§ 3. A Superintendent of Public Works shall be appointed by the Governor, by and with the advice and consent of the Senate, and hold his office until the end of the term of the Governor by whom he was nominated, and until his successor is appointed and qualified. He shall receive a compensation to be fixed by law. He shall be required by law to give security for the faithful execution of his office before entering upon the duties thereof. He shall be charged with the execution of all laws relating to the repair and navigation of the canals, and also of those relating to the construction and improvement of the canals, except so far as the execution of the laws relating to such construction or improvement shall be confided to the State Engineer and Surveyor; subject to the control of the Legislature, he shall make the rules and regulations for the navigation or use of the canals. He may be suspended or removed from office by the Governor, whenever, in his judgment, the public interest shall so require; but in case of the removal of such Superintendent of Public Works from office, the Governor shall file with the Secretary of State a statement of the cause of such removal, and shall report such removal and the cause thereof to the Legislature at its next session. The Superintendent of Public Works shall appoint not more than three assistant superintendents, whose duties shall be prescribed by him subject to modification by the Legislature, and who shall receive for their services a compensation to be fixed by law. They shall hold their office for three years, subject to suspension or removal by the Superintendent of Public Works, whenever, in his judgment, the public interest shall so require. Any vacancy in the office of any such assistant superintendent shall be filled for the remainder of the term for which he was appointed, by the Superintendent of Public Works; but in case of the suspension or removal of any such assistant superintendent by him, he shall at once report to the Governor, in writing, the cause of such removal. All other persons employed in the care and management of the canals, except collectors of tolls, and those in the department of the State Engineer and Surveyor, shall be appointed by the Superintendent of Public Works, and be subject to suspension or removal by him. The Superintendent of Public Works shall perform all the duties of the former

## Article V — Continued.

canal commissioners, and board of canal commissioners, as now declared by law, until otherwise provided by the Legislature. The Governor, by and with the advice and consent of the Senate, shall have power to fill vacancies in the office of Superintendent of Public Works; if the Senate be not in session, he may grant commissions which shall expire at the end of the next succeeding session of the Senate.

§ 4. A Superintendent of State Prisons shall be appointed by the Governor, by and with the advice and consent of the Senate, and hold his office for five years, unless sooner removed; he shall give security in such amount, and with such sureties as shall be required by law for the faithful discharge of his duties; he shall have the superintendence, management and control of State prisons, subject to such laws as now exist or may hereafter be enacted; he shall appoint the agents, wardens, physicians and chaplains of the prisons. The agent and warden of each prison shall appoint all other officers of such prison, except the clerk, subject to the approval of the same by the superintendent. The Comptroller shall appoint the clerks of the prisons. The superintendent shall have all the powers and perform all the duties not inconsistent herewith, which were formerly had and performed by the inspectors of State prisons. The Governor may remove the superintendent for cause at any time, giving to him a copy of the charges against him, and an opportunity to be heard in his defense.

§ 5. The Lieutenant-Governor, Speaker of the Assembly, Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor shall be the commissioners of the land office. The Lieutenant-Governor, Secretary of State, Comptroller, Treasurer and Attorney-General shall be the commissioners of the canal fund. The canal board shall consist of the commissioners of the canal fund, the State Engineer and Surveyor and the Superintendent of Public Works.

§ 6. The powers and duties of the respective boards, and of the several officers in this article mentioned, shall be such as now are or hereafter may be prescribed by law.

§ 7. The Treasurer may be suspended from office by the Governor, during the recess of the Legislature, and until thirty days after the commencement of the next session of the Legislature, whenever it shall appear to him that such Treasurer has, in any particular, violated his duty. The Governor shall appoint a competent person to discharge the duties of the office during such suspension of the Treasurer.

## Article V — Continued.

§ 8. All offices for the weighing, gauging, measuring, culling or inspecting any merchandise, produce, manufacture or commodity whatever, are hereby abolished; and no such office shall hereafter be created by law; but nothing in this section contained shall abrogate any office created for the purpose of protecting the public health or the interests of the State in its property, revenue, tolls or purchases, or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any office for such purposes hereafter.

§ 9. Appointments and promotions in the civil service of the State, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness, to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive; provided, however, that honorably discharged soldiers and sailors from the army and navy of the United States in the late Civil War, who are citizens and residents of this State, shall be entitled to preference in appointment and promotion, without regard to their standing on any list from which such appointment or promotion may be made. Laws shall be made to provide for the enforcement of this section.

Revised Art.	Const. Sec.		Present Art.	Const. Sec.
V	1	amending.....	V	1
V	2	.....	New	
V	3	revising.....	V	3
V	4	revising.....	V	4
V	5	revising.....	V	5
V	6	.....	V	6
V	7	.....	V	7
V	8	.....	V	8
V	9	.....	New	

## ARTICLE VI.

SECTION 1. The Supreme Court is continued with general jurisdiction in law and equity, subject to such appellate jurisdiction of the Court of Appeals as now is or may be prescribed by law not inconsistent with this article. The existing judicial districts of the State are continued until changed as hereinafter provided. The Supreme Court shall consist of the justices now in office, and of the judges transferred thereto by the fifth section of this article, all of whom shall continue to be justices of the Supreme Court during their respective terms, and of twelve additional justices, who shall reside in and be chosen by the electors of the several existing judicial districts, three in the first district, three in the second, and one

## Article VI—Continued.

in each of the other districts; and of their successors. The successors of said justices shall be chosen by the electors of their respective judicial districts. The Legislature may alter the judicial districts once after every enumeration, under the Constitution, of the inhabitants of the State, and thereupon reapportion the justices to be thereafter elected in the districts so altered.

§ 2. The Legislature shall divide the State into four judicial departments. The first department shall consist of the county of New York; the others shall be bounded by county lines, and be compact and equal in population as nearly as may be. Once every ten years the Legislature may alter the judicial departments, but without increasing the number thereof.

There shall be an Appellate Division of the Supreme Court, consisting of seven justices in the first department, and of five justices in each of the other departments. In each department four shall constitute a quorum and the concurrence of three shall be necessary to a decision. No more than five justices shall sit in any case.

From all the justices elected to the Supreme Court the Governor shall designate those who shall constitute the Appellate Division in each department; and he shall designate the presiding justice thereof, who shall act as such during his term of office, and shall be a resident of the department. The other justices shall be designated for terms of five years, or the unexpired portions of their respective terms of office, if less than five years. From time to time as the terms of such designations expire, or vacancies occur, he shall make new designations. He may also make temporary designations in case of the absence or inability to act, of any justice of the Appellate Division. A majority of the justices designated to sit in the Appellate Division in each department shall be residents of the department. Whenever the Appellate Division in any department shall be unable to dispose of its business within a reasonable time, a majority of the presiding justices of the several departments, at a meeting called by the presiding justice of the department in arrears, may transfer any pending appeals from such department to any other department for hearing and determination. No justice of the Appellate Division shall exercise any of the powers of a justice of the Supreme Court other than those of a justice out of court, and those pertaining to the Appellate Division or to the hearing and decision of motions submitted by consent of counsel. From and after the last day of December, one thousand eight hundred and ninety-five, the Appellate Division shall have the jurisdiction now exercised by the Supreme Court at its General Terms, and by the General Terms of the Court of Common

## Article VI — Continued.

Pleas for the City and County of New York, the Superior Court of the City of New York, the Superior Court of Buffalo and the City Court of Brooklyn, and such additional jurisdiction as may be conferred by the Legislature. It shall have power to appoint and remove a reporter.

The justices of the Appellate Division in each department shall have power to fix the times and places for holding Special and Trial Terms therein, and to assign the justices in the departments to hold such terms; or to make rules therefor.

§ 3. No judge or justice shall sit in the Appellate Division or in the Court of Appeals in review of a decision made by him or by any court of which he was at the time a sitting member. The testimony in equity cases shall be taken in like manner as in cases at law; and, except as herein otherwise provided, the Legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised.

§ 4. The official terms of the justices of the Supreme Court shall be fourteen years from and including the first day of January next after their election. When a vacancy shall occur otherwise than by expiration of term in the office of justice of the Supreme Court, the same shall be filled for a full term, at the next general election, happening not less than three months after such vacancy occurs; and, until the vacancy shall be so filled, the Governor, by and with the advice and consent of the Senate, if the Senate shall be in session, or if not in session, the Governor may fill such vacancy by appointment, which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

§ 5. The Superior Court of the City of New York, the Court of Common Pleas for the City and County of New York, the Superior Court of Buffalo, and the City Court of Brooklyn, are abolished from and after the first day of January, one thousand eight hundred and ninety-six, and thereupon the seals, records, papers and documents of or belonging to such courts shall be deposited in the offices of the clerks of the several counties in which said courts now exist; and all actions and proceedings then pending in such courts shall be transferred to the Supreme Court for hearing and determination. The judges of said courts in office on the first day of January, one thousand eight hundred and ninety-six, shall, for the remainder of the terms for which they were elected or appointed, be justices of the Supreme Court; but they shall sit only in the counties in which they were elected or appointed. The salaries shall be paid by the said counties respectively, and shall be the same as the salaries of

## Article VI — Continued.

the other justices of the Supreme Court residing in the same counties. Their successors shall be elected as justices of the Supreme Court by the electors of the judicial districts in which they respectively reside.

The jurisdiction now exercised by the several courts hereby abolished, shall be vested in the Supreme Court. Appeals from inferior and local courts now heard in the Court of Common Pleas for the City and County of New York and the Superior Court of Buffalo, shall be heard in the Supreme Court in such manner and by such justice or justices as the Appellate Divisions in the respective departments which include New York and Buffalo shall direct, unless otherwise provided by the Legislature.

§ 6. Circuit Courts and Courts of Oyer and Terminer are abolished from and after the last day of December, one thousand eight hundred and ninety-five. All their jurisdictions shall thereupon be vested in the Supreme Court, and all actions and proceedings then pending in such courts shall be transferred to the Supreme Court for hearing and determination. Any justice of the Supreme Court, except as otherwise provided in this article, may hold court in any county.

§ 7. The Court of Appeals is continued. It shall consist of the chief judge and associate judges now in office, who shall hold their offices until the expiration of their respective terms, and their successors, who shall be chosen by the electors of the State. The official terms of the chief judge and associate judges shall be fourteen years from and including the first day of January next after their election. Five members of the court shall form a quorum, and the concurrence of four shall be necessary to a decision. The court shall have power to appoint and remove its reporter, clerk and attendants.

§ 8. When a vacancy shall occur otherwise than by expiration of term in the office of chief or associate judge of the Court of Appeals, the same shall be filled, for a full term, at the next general election happening not less than three months after such vacancy occurs; and until the vacancy shall be so filled, the Governor, by and with the advice and consent of the Senate, if the Senate shall be in session, or if not in session, the Governor may fill such vacancy by appointment. If any such appointment of chief judge shall be made from among the associate judges, a temporary appointment of associate judge shall be made in like manner; but in such case, the person appointed chief judge shall not be deemed to vacate his office of associate judge any longer than until the expiration of his appointment as chief judge. The powers and jurisdiction of the court shall

## Article VI—Continued.

not be suspended for want of appointment or election, when the number of judges is sufficient to constitute a quorum. All appointments under this section shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

§ 9. After the last day of December, one thousand eight hundred and ninety-five, the jurisdiction of the Court of Appeals, except where the judgment is of death, shall be limited to the review of questions of law. No unanimous decision of the Appellate Division of the Supreme Court that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court, shall be reviewed by the Court of Appeals. Except where the judgment is of death, appeals may be taken as of right, to said court only from judgments or orders entered upon decisions of the Appellate Division of the Supreme Court, finally determining actions or special proceedings, and from orders granting new trials on exceptions, where the appellants stipulate that upon affirmance judgment absolute shall be rendered against them. The Appellate Division in any department may, however, allow an appeal upon any question of law which, in its opinion, ought to be reviewed by the Court of Appeals.

The Legislature may further restrict the jurisdiction of the Court of Appeals and the right of appeal thereto, but the right to appeal shall not depend upon the amount involved.

The provisions of this section shall not apply to orders made or judgments rendered by any General Term before the last day of December, one thousand eight hundred and ninety-five, but appeals therefrom may be taken under existing provisions of law.

§ 10. The judges of the Court of Appeals and the justices of the Supreme Court shall not hold any other office or public trust. All votes for any of them, for any other than a judicial office, given by the Legislature or the people, shall be void.

§ 11. Judges of the Court of Appeals and justices of the Supreme Court may be removed by concurrent resolution of both houses of the Legislature, if two-thirds of all the members elected to each house concur therein. All other judicial officers, except justices of the peace and judges or justices of inferior courts not of record, may be removed by the Senate, on the recommendation of the Governor, if two-thirds of all the members elected to the Senate concur therein. But no officer shall be removed by virtue of this section except for cause, which shall be entered on the journals, nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard. On the

## Article VI — Continued.

question of removal, the yeas and nays shall be entered on the journal.

§ 12. The judges and justices hereinbefore mentioned shall receive for their services a compensation established by law, which shall not be increased or diminished during their official terms, except as provided in section five of this article. No person shall hold the office of judge or justice of any court longer than until and including the last day of December next after he shall be seventy years of age. No judge or justice elected after the first day of January, one thousand eight hundred and ninety-four, shall be entitled to receive any compensation after the last day of December next after he shall be seventy years of age; but the compensation of every judge of the Court of Appeals or justice of the Supreme Court elected prior to the first day of January, one thousand eight hundred and ninety-four, whose term of office has been, or whose present term of office shall be, so abridged, and who shall have served as such judge or justice ten years or more, shall be continued during the remainder of the term for which he was elected; but any such judge or justice may, with his consent, be assigned by the Governor, from time to time, to any duty in the Supreme Court while his compensation is so continued.

§ 13. The Assembly shall have the power of impeachment, by a vote of a majority of all the members elected. The Court for the Trial of Impeachments shall be composed of the President of the Senate, the senators, or the major part of them, and the judges of the Court of Appeals, or the major part of them. On the trial of an impeachment against the Governor or Lieutenant-Governor, the Lieutenant-Governor shall not act as a member of the court. No judicial officer shall exercise his office, after articles of impeachment against him shall have been preferred to the Senate, until he shall have been acquitted. Before the trial of an impeachment the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this State; but the party impeached shall be liable to indictment and punishment according to law.

§ 14. The existing County Courts are continued, and the judges thereof now in office shall hold their offices until the expiration of their respective terms. In the county of Kings there shall be two



## Article VI — Continued.

county judges and the additional county judge shall be chosen at the next general election held after the adoption of this article. The successors of the several county judges shall be chosen by the electors of the counties for the term of six years. County Courts shall have the powers and jurisdiction they now possess, and also original jurisdiction in actions for the recovery of money only, where the defendants reside in the county, and in which the complaint demands judgment for a sum not exceeding two thousand dollars. The Legislature may hereafter enlarge or restrict the jurisdiction of the County Courts, provided, however, that their jurisdiction shall not be so extended as to authorize an action therein for the recovery of money only, in which the sum demanded exceeds two thousand dollars, or in which any person not a resident of the county is a defendant.

Courts of Sessions, except in the county of New York, are abolished from and after the last day of December, one thousand eight hundred and ninety-five. All the jurisdiction of the Court of Sessions in each county, except the county of New York, shall thereupon be vested in the County Court thereof, and all actions and proceedings then pending in such Courts of Sessions shall be transferred to said County Courts for hearing and determination. Every county judge shall perform such duties as may be required by law. His salary shall be established by law, payable out of the county treasury. A county judge of any county may hold County Courts in any other county when requested by the judge of such other county..

§ 15. The existing Surrogates' Courts are continued, and the surrogates now in office shall hold their offices until the expiration of their terms. Their successors shall be chosen by the electors of their respective counties, and their terms of office shall be six years, except in the county of New York, where they shall continue to be fourteen years. Surrogates and Surrogates' Courts shall have the jurisdiction and powers which the surrogates and existing Surrogates' Courts now possess, until otherwise provided by the Legislature. The county judge shall be surrogate of his county, except where a separate surrogate has been or shall be elected. In counties having a population exceeding forty thousand, wherein there is no separate surrogate, the Legislature may provide for the election of a separate officer to be surrogate, whose term of office shall be six years. When the surrogate shall be elected as a separate officer his salary shall be established by law, payable out of the county treasury. No county judge or surrogate shall hold office longer than

## Article VI — Continued.

until and including the last day of December next after he shall be seventy years of age. Vacancies occurring in the office of county judge or surrogate shall be filled in the same manner as like vacancies occurring in the Supreme Court. The compensation of any county judge or surrogate shall not be increased or diminished during his term of office. For the relief of Surrogates' Courts the Legislature may confer upon the Supreme Court in any county having a population exceeding four hundred thousand, the powers and jurisdiction of surrogates, with authority to try issues of fact by jury in probate cases.

§ 16. The Legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate, in cases of their inability or of a vacancy, and in such other cases as may be provided by law, and to exercise such other powers in special cases as are or may be provided by law.

§ 17. The electors of the several towns shall, at their annual town meetings, or at such other time and in such manner as the Legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace and judges or justices of inferior courts not of record, and their clerks, may be removed for cause, after due notice and an opportunity of being heard, by such courts as are or may be prescribed by law. Justices of the peace and district court justices may be elected in the different cities of this State in such manner, and with such powers, and for such terms respectively, as are or shall be prescribed by law; all other judicial officers in cities, whose election or appointment is not otherwise provided for in this article, shall be chosen by the electors of such cities, or appointed by some local authorities thereof.

§ 18. Inferior local courts of civil and criminal jurisdiction may be established by the Legislature, but no inferior local court hereafter created shall be a court of record. The Legislature shall not hereafter confer upon any inferior or local court of its creation, any equity jurisdiction or any greater jurisdiction in other respects than is conferred upon County Courts by or under this article. Except as herein otherwise provided, all judicial officers shall be elected or appointed at such times and in such manner as the Legislature may direct.

## Article VI — Continued.

§ 19. Clerks of the several counties shall be clerks of the Supreme Court, with such powers and duties as shall be prescribed by law. The justices of the Appellate Division in each department shall have power to appoint and to remove a clerk who shall keep his office at a place to be designated by said justices. The clerk of the Court of Appeals shall keep his office at the seat of government. The clerk of the Court of Appeals and the clerks of the Appellate Division shall receive compensation to be established by law and paid out of the public treasury.

§ 20. No judicial officer, except justices of the peace, shall receive to his own use any fees or perquisites of office; nor shall any judge of the Court of Appeals, or justice of the Supreme Court, or any county judge or surrogate hereafter elected in a county having a population exceeding one hundred and twenty thousand, practice as an attorney or counselor in any court of record in this State, or act as referee. The Legislature may impose a similar prohibition upon county judges and surrogates in other counties. No one shall be eligible to the office of judge of the Court of Appeals, justice of the Supreme Court, or, except in the county of Hamilton, to the office of county judge or surrogate, who is not an attorney and counselor of this State.

§ 21. The Legislature shall provide for the speedy publication of all statutes; and shall regulate the reporting of the decisions of the courts; but all laws and judicial decisions shall be free for publication by any person.

§ 22. Justices of the peace and other local judicial officers provided for in sections seventeen and eighteen, in office when this article takes effect, shall hold their offices until the expiration of their respective terms.

§ 23. Courts of Special Sessions shall have such jurisdiction of offenses of the grade of misdemeanors as may be prescribed by law.

Revised Const.  
Art. Sec.

Present Const.  
Art. Sec.

VI 1-23 inclusive — amending ..... VI 1-28

## ARTICLE VII.

SECTION 1. The credit of the State shall not in any manner be given or loaned to or in aid of any individual, association or corporation.

§ 2. The State may, to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts; but such debts, direct or contingent, singly or in the aggregate, shall not at any

## Article VII — Continued.

time exceed one million of dollars; and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained, or to repay the debt so contracted, and to no other purpose whatever.

§ 3. In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection, or defend the State in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

§ 4. Except the debts specified in sections two and three of this article, no debts shall hereafter be contracted by or on behalf of this State, unless such debt shall be authorized by a law, for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay, the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within eighteen years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election. On the final passage of such bill in either house of the Legislature, the question shall be taken by ayes and noes, to be duly entered on the journals thereof, and shall be: "Shall this bill pass, and ought the same to receive the sanction of the people?"

The Legislature may at any time, after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time, by law, forbid the contracting of any further debt or liability under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted, in pursuance of such law, shall remain in force and be irrepealable, and be annually collected, until the proceeds thereof shall have made the provision hereinbefore specified to pay and discharge the interest and principal of such debt and liability. The money arising from any loan or stock creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever. No such law shall be submitted to be voted on, within three months after its passage, or at any general election when any other law, or any bill, or any amendment to the Constitution, shall be submitted to be voted for or against.

## Article VII — Continued.

§ 5. The sinking funds provided for the payment of interest and the extinguishment of the principal of the debts of the State shall be separately kept and safely invested, and neither of them shall be appropriated or used in any manner other than for the specific purpose for which it shall have been provided.

§ 6. Neither the Legislature, canal board, nor any person or persons acting in behalf of the State, shall audit, allow, or pay any claim which, as between citizens of the State, would be barred by lapse of time. This provision shall not be construed to repeal any statute fixing the time within which claims shall be presented or allowed, nor shall it extend to any claims duly presented within the time allowed by law, and prosecuted with due diligence from the time of such presentment. But if the claimant shall be under legal disability, the claim may be presented within two years after such disability is removed.

§ 7. The lands of the State, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.

§ 8. The Legislature shall not sell, lease or otherwise dispose of the Erie canal, the Oswego canal, the Champlain canal, the Cayuga and Seneca canal, or the Black River canal; but they shall remain the property of the State and under its management forever. The prohibition of lease, sale or other disposition herein contained, shall not apply to the canal known as the Main and Hamburg street canal, situated in the city of Buffalo, and which extends easterly from the westerly line of Main street to the westerly line of Hamburg street. All funds that may be derived from any lease, sale or other disposition of any canal shall be applied to the improvement, superintendence or repair of the remaining portion of the canals.

§ 9. No tolls shall hereafter be imposed on persons or property transported on the canals, but all boats navigating the canals, and the owners and masters thereof, shall be subject to such laws and regulations as have been or may hereafter be enacted concerning the navigation of the canals. The Legislature shall annually, by equitable taxes, make provision for the expenses of the superintendence and repairs of the canals. All contracts for work or materials on any canal shall be made with the persons who shall offer to do or provide the same at the lowest price, with adequate security for their performance. No extra compensation shall be made to any contractor; but if, from any unforeseen cause, the terms of any

Article VII — Continued.

contract shall prove to be unjust and oppressive, the canal board may, upon the application of the contractor, cancel such contract.

§ 10. The canals may be improved in such manner as the Legislature shall provide by law. A debt may be authorized for that purpose in the mode prescribed by section four of this article, or the cost of such improvement may be defrayed by the appropriation of funds from the State treasury or by equitable annual tax.

Revised Art.	Const. Sec.		Present Art.	Const. Sec.
		abrogating.....	VII	7
VII	1	.....	VII	9
VII	2	.....	VII	10
VII	3	.....	VII	11
VII	4	revising.....	VII	12
VII	5	.....	VII	13
VII	6	revising.....	VII	14
VII	7	.....	New	
VII	8	amending.....	VII	6
VII	9	amending.....	VII	3
VII	10	.....	New	

ARTICLE VIII.

SECTION 1. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed.

§ 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

§ 3. The term corporations as used in this article shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

§ 4. The Legislature shall, by general law, conform all charters of savings banks, or institutions for savings, to a uniformity of powers, rights and liabilities, and all charters hereafter granted for such corporations shall be made to conform to such general law, and to such amendments as may be made thereto. And no such corporation shall have any capital stock, nor shall the trustees thereof, or any of them, have any interest whatever, direct or

## Article VIII — Continued.

indirect, in the profits of such corporation; and no director or trustee of any such bank or institution shall be interested in any loan or use of any money or property of such bank or institution for savings. The Legislature shall have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws.

§ 5. The Legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments, by any person, association or corporation, issuing bank notes of any description.

§ 6. The Legislature shall provide by law for the registry of all bills or notes, issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

§ 7. The stockholders of every corporation and joint-stock association for banking purposes, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind.

§ 8. In case of the insolvency of any bank or banking association, the billholders thereof shall be entitled to preference in payment, over all other creditors of such bank or association.

§ 9. Neither the credit nor the money of the State shall be given or loaned to or in aid of any association, corporation or private undertaking. This section shall not, however, prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper. Nor shall it apply to any fund or property now held, or which may hereafter be held, by the State for educational purposes.

§ 10. No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law. No county or city shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of said

## Article VIII — Continued.

county or city subject to taxation, as it appeared by the assessment-rolls of said county or city on the last assessment for State or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as may now exist, shall be absolutely void, except as herein otherwise provided. No county or city whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water; but the term of the bonds issued to provide the supply of water shall not exceed twenty years, and a sinking fund shall be created on the issuing of the said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within five years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city, if there shall be any such debt, shall be included in ascertaining the power of the city to become otherwise indebted. Whenever hereafter the boundaries of any city shall become the same as those of a county, the power of the county to become indebted shall cease, but the debt of the county at that time existing shall not be included as a part of the city debt. The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or any such city of this State, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt.

§ 11. The Legislature shall provide for a State Board of Charities, which shall visit and inspect all institutions, whether State, county, municipal, incorporated or not incorporated, which



## Article VIII — Continued.

are of a charitable, eleemosynary, correctional or reformatory character, excepting only such institutions as are hereby made subject to the visitation and inspection of either of the commissions hereinafter mentioned, but including all reformatories except those in which adult males convicted of felony shall be confined; a State Commission in Lunacy, which shall visit and inspect all institutions, either public, or private, used for the care and treatment of the insane (not including institutions for epileptics or idiots); a State Commission of Prisons which shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors.

§ 12. The members of the said board and of the said commissions shall be appointed by the Governor, by and with the advice and consent of the Senate; and any member may be removed from office by the Governor for cause, an opportunity having been given him to be heard in his defense.

§ 13. Existing laws relating to institutions referred to in the foregoing sections and to their supervision and inspection, in so far as such laws are not inconsistent with the provisions of the Constitution, shall remain in force until amended or repealed by the Legislature. The visitation and inspection herein provided for, shall not be exclusive of other visitation and inspection now authorized by law.

§ 14. Nothing in this Constitution contained shall prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper; or prevent any county, city, town or village from providing for the care, support, maintenance and secular education, of inmates of orphan asylums, homes for dependent children or correctional institutions, whether under public or private control. Payments by counties, cities, towns and villages to charitable, eleemosynary, correctional and reformatory institutions, wholly or partly under private control, for care, support and maintenance, may be authorized, but shall not be required by the Legislature. No such payments shall be made for any inmate of such institutions who is not received and retained therein pursuant to rules established by the State Board of Charities. Such rules shall be subject to the control of the Legislature by general laws.

§ 15. Commissioners of the State Board of Charities and Commissioners of the State Commission in Lunacy, now holding office, shall be continued in office for the term for which they were appointed, respectively, unless the Legislature shall otherwise pro-

Article VIII — Continued.

vide. The Legislature may confer upon the commissioners and upon the board mentioned in the foregoing sections any additional powers that are not inconsistent with other provisions of the Constitution.

Revised Const.			Present Const.	
Art.	Sec.		Art.	Sec.
VIII	1	.....	VIII	1
VIII	2	.....	VIII	2
VIII	3	.....	VIII	3
VIII	4	.....	VIII	4
VIII	5	.....	VIII	5
VIII	6	.....	VIII	6
VIII	7	amending.....	VIII	7
VIII	8	.....	VIII	8
VIII	9	.....	VIII	10
VIII	10	amending.....	VIII	11
VIII	11-15	.....	New	

ARTICLE IX.

SECTION 1. The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this State may be educated.

§ 2. The corporation created in the year one thousand seven hundred and eighty-four, under the name of The Regents of the University of the State of New York, is hereby continued under the name of The University of the State of New York. It shall be governed and its corporate powers, which may be increased, modified or diminished by the Legislature, shall be exercised, by not less than nine regents.

§ 3. The capital of the common school fund, the capital of the literature fund, and the capital of the United States deposit fund, shall be respectively preserved inviolate. The revenue of the said common school fund shall be applied to the support of common schools; the revenue of the said literature fund shall be applied to the support of academies; and the sum of twenty-five thousand dollars of the revenues of the United States deposit fund shall each year be appropriated to and made part of the capital of the said common school fund.

§ 4. Neither the State nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any

## Article IX — Continued.

religious denomination, or in which any denominational tenet or doctrine is taught.

Revised Const.			Present Const.	
Art.	Sec.		Art.	Sec.
IX	1	.....	New	
IX	2	.....	New	
IX	3	.....	IX	1
IX	4	.....	New	

## ARTICLE X.

SECTION 1. Sheriffs, clerks of counties, district attorneys, and registers in counties having registers, shall be chosen by the electors of the respective counties, once in every three years and as often as vacancies shall happen, except in the counties of New York and Kings, and in counties whose boundaries are the same as those of a city, where such officers shall be chosen by the electors once in every two or four years as the Legislature shall direct. Sheriffs shall hold no other office, and be ineligible for the next term after the termination of their offices. They may be required by law to renew their security, from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff. The Governor may remove any officer, in this section mentioned, within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense.

§ 2. All county officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of the respective counties or appointed by the boards of supervisors, or other county authorities, as the Legislature shall direct. All city, town and village officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the Legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for by this Constitution, and all officers, whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

§ 3. When the duration of any office is not provided by this Constitution, it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

Article X — Continued.

§ 4. The time of electing all officers named in this article shall be prescribed by law.

§ 5. The Legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

§ 6. The political year and legislative term shall begin on the first day of January; and the Legislature shall, every year, assemble on the first Wednesday in January.

§ 7. Provision shall be made by law for the removal for misconduct or malversation in office of all officers, except judicial, whose powers and duties are not local or legislative and who shall be elected at general elections, and also for supplying vacancies created by such removal.

§ 8. The Legislature may declare the cases in which any office shall be deemed vacant when no provision is made for that purpose in this Constitution.

§ 9. No officer whose salary is fixed by the Constitution shall receive any additional compensation. Each of the other State officers named in the Constitution shall, during his continuance in office, receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed; nor shall he receive to his use any fees or perquisites of office or other compensation.

Revised Const.			Present Const.	
Art.	Sec.		Art.	Sec.
X	1	amending.....	X	1
X	2	.....	X	2
X	3	.....	X	3
X	4	.....	X	4
X	5	.....	X	5
X	6	amending.....	X	6
X	7	.....	X	7
X	8	.....	X	8
X	9	.....	X	9

ARTICLE XI.

SECTION 1. All able-bodied male citizens between the ages of eighteen and forty-five years, who are residents of the State, shall constitute the militia, subject, however, to such exemptions as are now, or may be hereafter created by the laws of the United States, or by the Legislature of this State.

## Article XI — Continued.

§ 2. The Legislature may provide for the enlistment into the active force of such other persons as may make application to be so enlisted.

§ 3. The militia shall be organized and divided into such land and naval, and active and reserve forces, as the Legislature may deem proper, provided, however, that there shall be maintained at all times a force of not less than ten thousand enlisted men, fully uniformed, armed, equipped, disciplined and ready for active service. And it shall be the duty of the Legislature at each session to make sufficient appropriations for the maintenance thereof.

§ 4. The Governor shall appoint the chiefs of the several staff department, his aides-de-camp and military secretary, all of whom shall hold office during his pleasure, their commissions to expire with the term for which the Governor shall have been elected; he shall also nominate, and with the consent of the Senate appoint, all major-generals.

§ 5. All other commissioned and non-commissioned officers shall be chosen or appointed in such manner as the Legislature may deem most conducive to the improvement of the militia, provided, however, that no law shall be passed changing the existing mode of election and appointment unless two-thirds of the members present in each house shall concur therein.

§ 6. The commissioned officers shall be commissioned by the Governor as commander-in-chief. No commissioned officer shall be removed from office during the term for which he shall have been appointed or elected, unless by the Senate on the recommendation of the Governor, stating the grounds on which such removal is recommended, or by the sentence of a court-martial, or upon the findings of an examining board organized pursuant to law, or for absence without leave for a period of six months or more.

Revised Const.			Present Const.	
Art.	Sec.		Art.	Sec.
XI	1	amending.....	XI	1
XI	2	amending.....	XI	2
XI	3	amending.....	XI	3
XI	4	amending.....	XI	4
XI	5	amending.....	XI	5
XI	6	amending.....	XI	6

## ARTICLE XII.

SECTION 1. It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent abuses in assessments, and in contracting debt by such municipal corporations.

§ 2. All cities are classified according to the latest State enumeration, as from time to time made, as follows: The first class includes all cities having a population of two hundred and fifty thousand, or more; the second class, all cities having a population of fifty thousand, and less than two hundred and fifty thousand; the third class, all other cities. Laws relating to the property, affairs or government of cities, and the several departments thereof, are divided into general and special city laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed except in conformity with the provisions of this section. After any bill for a special city law, relating to a city, has been passed by both branches of the Legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of such city, and within fifteen days thereafter the mayor shall return such bill to the house from which it was sent, or if the session of the Legislature at which such bill was passed has terminated, to the Governor, with the mayor's certificate thereon, stating whether the city has or has not accepted the same.

In every city of the first class the mayor, and, in every other city, the mayor and the legislative body thereof concurrently, shall act for such city as to such bill; but the Legislature may provide for the concurrence of the legislative bodies in cities of the first class. The Legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided by every such city. Whenever any such bill is accepted as herein provided, it shall be subject as other bills, to the action of the Governor. Whenever, during the session at which it was passed, any such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days is not returned, it may nevertheless again be passed by both

## Article XII — Continued.

branches of the Legislature, and it shall then be subject as are other bills, to the action of the Governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words "accepted by the city," or "cities," as the case may be; in every such law which is passed without such acceptance, by the words "passed without the acceptance of the city," or "cities," as the case may be.

§ 3. All elections of city officers, including supervisors and judicial officers of inferior local courts, elected in any city or part of a city, and of county officers elected in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, except to fill vacancies, shall be held on the Tuesday succeeding the first Monday in November in an odd-numbered year, and the term of every such officer shall expire at the end of an odd-numbered year. The terms of office of all such officers, elected before the first day of January, one thousand eight hundred and ninety-five, whose successors have not then been elected, which under existing laws would expire with an even-numbered year, or in an odd-numbered year, and before the end thereof, are extended to and including the last day of December next following the time when such terms would otherwise expire; the terms of office of all such officers, which under existing laws would expire in an even-numbered year, and before the end thereof, are abridged so as to expire at the end of the preceding year. This section shall not apply to any city of the third class, or to elections of any judicial officer, except judges and justices of inferior local courts.

Revised Art.	Const. Sec.		Present Art.	Const. Sec.
XII	1	.....	VIII	9
XII	2	.....	New	
XII	3	.....	New	

## ARTICLE XIII.

SECTION 1. Members of the Legislature, and all officers, executive and judicial, except such inferior officers as shall be by law exempted shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of——, according to the best of my ability;" and all such officers who shall have been chosen at any election shall, before they enter

## Article XIII — Continued.

on the duties of their respective offices, take and subscribe the oath or affirmation above prescribed, together with the following addition thereto, as part thereof:

“ And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contribute, or offered or promised to contribute any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote,” and no other oath, declaration or test shall be required as a qualification for any office of public trust.

§ 2. Any person holding office under the laws of this State, who, except in payment of his legal salary, fees or perquisites, shall receive or consent to receive, directly or indirectly, any thing of value or of personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action or omission to act is to be in any degree influenced thereby; shall be deemed guilty of a felony. This section shall not affect the validity of any existing statute in relation to the offense of bribery.

§ 3. Any person who shall offer or promise a bribe to an officer, if it shall be received, shall be deemed guilty of a felony and liable to punishment, except as herein provided. No person offering a bribe shall, upon any prosecution of the officer for receiving such bribe, be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor, if he shall testify to the giving or offering of such bribe. Any person who shall offer or promise a bribe, if it be rejected by the officer to whom it was tendered, shall be deemed guilty of an attempt to bribe, which is hereby declared to be a felony.

§ 4. Any person charged with receiving a bribe, or with offering or promising a bribe, shall be permitted to testify in his own behalf in any civil or criminal prosecution therefor.

§ 5. No public officer, or person elected or appointed to a public office, under the laws of this State, shall directly or indirectly ask, demand, accept, receive or consent to receive for his own use or benefit, or for the use or benefit of another, any free pass, free transportation, franking privilege or discrimination in passenger, telegraph or telephone rates, from any person or corporation, or make use of the same himself or in conjunction with another. A person who violates any provision of this section, shall be deemed guilty of a misdemeanor, and shall forfeit his office at the suit of



Article XIII — Continued.

the Attorney-General. Any corporation, or officer or agent thereof, who shall offer or promise to a public officer, or person elected or appointed to a public office, any such free pass, free transportation, franking privilege or discrimination, shall also be deemed guilty of a misdemeanor and liable to punishment except as herein provided. No person, or officer or agent of a corporation giving any such free pass, free transportation, franking privilege or discrimination hereby prohibited, shall be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor if he shall testify to the giving of the same.

§ 6. Any district attorney who shall fail faithfully to prosecute a person charged with the violation in his county of any provision of this article which may come to his knowledge, shall be removed from office by the Governor, after due notice and an opportunity of being heard in his defense. The expenses which shall be incurred by any county in investigating and prosecuting any charge of bribery or attempting to bribe any person holding office under the laws of this State, within such county, or of receiving bribes by any such person in said county, shall be a charge against the State, and their payment by the State shall be provided by law.

Revised Art.	Const. Sec.		Present Art.	Const. Sec.
XIII	1	.....	XII	1
XIII	2	.....	XV	1
XIII	3	.....	XV	2
XIII	4	.....	XV	3
XIII	5	.....	New	
XIII	6	.....	XV	4

ARTICLE XIV.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate and Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election of Senators, and shall be published for three months to the time of making such choice; and if in the Legislature so next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people for approval

## Article XIV — Continued.

in such manner and at such times as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of the Constitution from and after the first day of January next after such approval.

§ 2. At the general election to be held in the year one thousand nine hundred and sixteen, and every twentieth year thereafter, and also at such times as the Legislature may by law provide; the question, " Shall there be a convention to revise the Constitution and amend the same?" shall be decided by the electors of the State; and in case a majority of the electors voting thereon shall decide in favor of a convention for such purpose, the electors of every Senate district of the State, as then organized, shall elect three delegates at the next ensuing general election at which members of the Assembly shall be chosen, and the electors of the State voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such convention shall have been completed. Every delegate shall receive for his services the same compensation and the same mileage as shall then be annually payable to the members of the Assembly. A majority of the Convention shall constitute a quorum for the transaction of business, and no amendment to the Constitution shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all the delegates elected to the Convention, the yeas and nays being entered on the journal to be kept. The Convention shall have the power to appoint such officers, employes and assistants as it may deem necessary, and fix their compensation and to provide for the printing of its documents, journals and proceedings. The Convention shall determine the rules of its own proceedings, choose its own officers, and be the judge of the election, returns and qualifications of its members. In case of a vacancy, by death, resignation or other cause, of any district delegate elected to the Convention, such vacancy shall be filled by a vote of the remaining delegates representing the district in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at-large, such vacancy shall be filled by a vote of the remaining delegates-at-large. Any proposed Constitution or constitutional amendment which shall have been adopted by such Convention, shall be submitted to a vote of the electors of the

## Article XIV — Continued.

State at the time and in the manner provided by such Convention, at an election which shall be held not less than six weeks after the adjournment of such Convention. Upon the approval of such Constitution or constitutional amendments, in the manner provided in the last preceding section, such Constitution or constitutional amendment, shall go into effect on the first day of January next after such approval.

§ 3. Any amendment proposed by a constitutional convention relating to the same subject as an amendment proposed by the Legislature, coincidently submitted to the people for approval at the general election held in the year one thousand eight hundred and ninety-four, or at any subsequent election, shall, if approved, be deemed to supersede the amendment so proposed by the Legislature.

Revised Art.	Const. Sec.		Present Const. Art.	Sec.
XIV	1	amending.....	XIII	1
XIV	2	amending.....	XIII	2
XIV	3	.....	New	

## ARTICLE XV.

SECTION 1. This Constitution shall be in force from and including the first day of January, one thousand eight hundred and ninety-five, except as herein otherwise provided.

Revised Art.	Const. Sec.		Present Const. Art.	Sec.
XV	1	.....	XIV	13

Done in Convention at the Capitol in the city of Albany, the twenty-ninth day of September, in the year one thousand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred and nineteenth.

In witness whereof, we have hereunto subscribed our names.

JOSEPH HODGES CHOATE,  
*President.*

CHARLES ELLIOTT FITCH,  
*Secretary.*

SCHEDULE SHOWING WHERE SECTIONS OF CONSTITUTION OF 1846 OCCUR IN REVISED CONSTITUTION.

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Sec. 7. No member to receive an appointment.....	Sec. 7
Sec. 8. Persons disqualified from being members.....	Sec. 8
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Sec. 10. Powers of each house.....	(amended by) Sec. 10
Sec. 11. Journals to be kept.....	Sec. 11
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W. H. STEELE,  
*Editor.*

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*Editor.*

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